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Vol. VI
TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1942

No. 7

FREDERICK H. ECKER, JOHN W. STEDMAN AND REEVE SCHLEY,
CONSTITUTING ~~INTERNATIONAL BONDHOLDERS COMMITTEE,~~
PETITIONERS, ~~INSTITUTE~~.

WESTERN PACIFIC RAILROAD CORPORATION, A. C. JAMES CO.,
THE RAILROAD CREDIT CORPORATION, ET AL.

No. 8

CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO AND
SAMUEL ARMSTRONG, AS TRUSTEES UNDER THE WESTERN
PACIFIC RAILROAD COMPANY FIRST MORTGAGE, DATED JUNE
26, 1916, PETITIONERS.

^{vs.}

WESTERN PACIFIC RAILROAD CORPORATION, THE WESTERN
PACIFIC RAILROAD COMPANY, IRVING TRUST COMPANY, ETC.,
ET AL.

No. 20

THE WESTERN PACIFIC RAILROAD COMPANY, PETITIONER,

^{vs.}

FREDERICK H. ECKER, ET AL.

No. 33

RECONSTRUCTION FINANCE CORPORATION, PETITIONER,

^{vs.}

WESTERN PACIFIC RAILROAD CORPORATION, A. C. JAMES CO.,
ET AL.

No. 61

IRVING TRUST COMPANY, AS SUBSTITUTED TRUSTEE UNDER
THE GENERAL AND REFUNDING MORTGAGE OF WESTERN
PACIFIC RAILROAD COMPANY, PETITIONER.

^{vs.}

CROCKER FIRST NATIONAL BANK OF SAN FRANCISCO, ET AL.,
ETC.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETITIONS FOR CERTIORARI FILED

DECEMBER 30, 1941.
JANUARY 17, 1942.
FEBRUARY 28, 1942.
MARCH 30, 1942.

CERTIORARI GRANTED APRIL 27, 1942.



No. 9714

United States
Circuit Court of Appeals
for the Ninth Circuit.

In the Matter of
THE WESTERN PACIFIC RAILROAD COMPANY, a corporation,
Debtor.

WESTERN PACIFIC RAILROAD CORPORATION, a corporation, THE WESTERN PACIFIC RAILROAD COMPANY, a corporation and IRVING TRUST COMPANY, a corporation, as substituted Trustee under the General and Refunding Mortgage of Western Pacific Railroad Company, A. C. JAMES CO., a corporation, THE RAILROAD CREDIT CORPORATION, a corporation,

Appellants,

vs.

INSTITUTIONAL BONDHOLDERS COMMITTEE and
RECONSTRUCTION FINANCE CORPORATION,
Appellees.

Transcript of Record

(Excluding Certain Portions not Printed, in Accordance with
Stipulation and Order.)

In Six Volumes

VOLUME VI

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Upon Appeals from the District Court of the United
States for the Northern District of California,
Southern Division.

~~THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO MONTEBELL RAILWAY
TIDEWATER SOUTHERN RAILWAY COMPANY
DANIEL CREEK RAILROAD COMPANY
OPERATING RESULTS - COMBINED
(All Inter-Company Items Eliminated)~~

	MONTH OF OCTOBER				PERIOD JANUARY 1ST TO OCTOBER 31ST			
			Increase or Decrease				Increase or Decrease	
	1936	1935	Amount	Per Cent	1936	1935	Amount	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	1,591.09	1,596.73	.54	.35	1,591.09	1,596.73	.54	.35
<u>OPERATING REVENUES</u>								
Freight	\$1,897,113.17	\$1,938,528.07	-41,414.90	-2.13	\$12,458,942.31	\$10,876,447.44	\$1,582,494.87	14.55
Passenger	57,943.30	77,179.09	-19,236.79	-25.05	696,092.15	621,954.21	74,140.94	11.92
Mail	4,280.97	4,244.23	.36	.87	41,613.43	45,295.92	3,682.49	8.13
Express	7,685.24	7,188.00	527.24	7.37	112,284.43	89,263.89	23,020.54	25.79
Dining Car, Hotel & Restaurant	5,765.02	5,775.00	-.02	-.21	83,096.35	54,974.61	28,121.74	44.77
Miscellaneous	25,443.96	22,980.63	2,463.33	10.82	179,986.08	164,896.09	15,089.99	9.15
Total Railway Operating Revenues	\$2,028,231.86	\$2,040,846.91	-\$12,615.25	-1.05	\$13,582,017.76	\$11,859,632.16	\$1,699,185.59	14.34
<u>OPERATING EXPENSES</u>								
W. of W. & S.-Ord. and Budget	\$ 198,266.87	\$ 302,788.19	\$ 104,521.32	34.52	\$ 2,040,035.69	\$ 2,341,949.31	\$ 301,913.62	13.89
W. of W. & S.-Rehabil. Program (W.P.RR Co.)	65,178.00	65,178.00	-	-	1,058,884.47	-	1,058,884.47	-
Total	263,445.46	302,788.19	39,342.73	12.99	3,098,920.18	2,341,949.31	756,970.85	32.32
W. of E.-Ord. and Budget	\$ 289,832.25	\$ 208,254.11	\$ 81,278.14	10.22	\$ 2,061,013.80	\$ 1,903,182.23	\$ 157,861.37	8.29
W. of E.-Rehabil. Program (W.P.RR Co.)	72,616.82	-	72,616.82	-	477,940.37	-	477,940.37	-
Total	302,149.07	208,254.11	93,894.96	45.09	2,538,953.97	1,903,182.23	635,801.74	33.41
Power	14,007.35	14,869.22	-\$61.87	5.80	134,079.41	131,913.40	2,166.01	1.64
Traffic	50,232.80	57,475.23	1,747.57	3.04	606,323.09	599,506.13	7,726.96	1.29
Transportation - Rail Line	661,914.40	605,339.85	56,576.55	9.35	5,222,317.27	4,874,804.11	647,513.16	14.15
Miscellaneous Operations	10,098.75	7,592.81	2,505.94	33.00	90,658.91	72,995.23	17,663.68	24.20
General	59,170.02	55,784.92	3,365.10	6.08	580,929.57	419,241.86	131,587.71	31.41
Transportation for Inv.-Cr.	9,875.84	1,471.37	7,404.27	-	47,485.32	9,173.63	38,311.69	-
Total Railway Operating Expenses	\$1,361,132.21	\$1,250,830.96	\$ 110,501.25	8.84	\$12,194,697.06	\$10,033,478.64	\$2,161,218.42	21.54
<u>NET REVENUE FROM RAILWAY OPERATIONS</u>	667,099.45	799,215.95	132,116.50	16.33	1,357,320.89	1,819,553.50	462,033.63	25.40
Excise and Use Tax Accruals-Ord. and Budget	\$ 33,558.99	\$ -	\$ 33,558.99	-	\$ 265,170.00	\$ -	\$ 265,170.00	-
Excise and Use Tax Accruals-Rehabil. Program (W.P.RR Co.)	1,827.43	1,827.43	-	-	35,120.20	32,180.20	-	-
Railway Tax Accruals-All Other	38,826.12	60,070.93	1,244.81	2.07	593,663.67	635,018.10	41,354.43	6.51
Railway Operating Income	\$ 572,886.91	\$ 739,145.02	\$ 166,258.11	22.49	\$ 465,366.82	\$ 1,184,335.42	\$ 719,988.60	50.71
Hire of Equipment - Net Debit	\$ 145,006.48	\$ 197,130.01	\$ 52,192.53	26.74	\$ 939,075.17	\$ 880,827.41	\$ 58,447.76	6.64
Joint Facility Rents - Net Credit	15,285.60	8,602.25	6,683.35	77.70	104,865.22	96,385.68	6,479.54	6.50
Net Railway Operating Income	\$ 443,166.23	\$ 550,606.26	\$ 107,442.03	19.51	\$ 368,843.13	\$ 402,093.69	\$ 770,936.82	-
<u>NON-OPERATING INCOME</u>								
Rental of Property	\$ 31,660.03	\$ 40,908.69	\$ 9,248.66	22.61	\$ 361,816.24	\$ 403,854.34	\$ 42,038.10	10.41
Interest Accruals	1,627.19	1,398.79	228.40	16.33	14,587.49	14,585.75	1.74	.01
Miscellaneous	16.28	2.00	14.28	-	12,008	343.55	218.47	63.59
Total Non-Operating Income	\$ 33,303.50	\$ 42,309.48	\$ 9,005.98	21.29	\$ 376,526.81	\$ 418,783.64	\$ 42,254.83	10.09
<u>GROSS INCOME</u>	\$ 476,469.73	\$ 592,917.74	\$ 116,448.01	19.64	\$ 7,685.68	\$ 820,877.35	\$ 813,191.65	99.06
<u>MISCELLANEOUS DEDUCTIONS</u>								
Miscellaneous Rents	2,636.61	2,651.76	15.15	.57	25,473.96	35,370.84	9,896.88	27.98
Miscellaneous Tax Accruals	4,527.98	3,393.41	1,134.57	33.43	42,182.82	39,590.60	2,592.22	6.55
Amortization of Discount	11,760.26	11,917.79	157.53	1.32	117,844.80	119,660.12	1,815.32	1.52
Miscellaneous	7,223.27	8,696.60	2,473.33	-	28,137.87	32,224.60	4,086.73	12.68
Total Miscellaneous Deductions	\$ 11,701.58	\$ 8,266.36	\$ 3,435.22	41.56	\$ 213,639.45	\$ 226,846.16	\$ 13,208.71	5.82
<u>AVAILABLE FOR INTEREST</u>	\$ 484,768.15	\$ 584,551.38	\$ 119,883.23	20.51	\$ 205,953.77	\$ 594,031.17	\$ 799,984.94	-
Interest on Funded Debt	\$ 276,095.30	\$ 278,900.04	\$ 2,894.74	1.04	\$ 2,764,705.26	\$ 2,793,397.72	\$ 28,692.48	1.03
Interest on Unfunded Debt	13,542.58	3,356.19	10,186.39	303.51	91,409.35	33,128.23	58,281.12	175.93
Total Interest Deductions	\$ 289,637.88	\$ 282,346.23	\$ 7,291.65	2.58	\$ 2,866,114.81	\$ 2,826,525.95	\$ 29,588.66	1.05
<u>NET INCOME</u>	\$ 175,130.27	\$ 302,305.15	\$ 127,174.88	42.06	\$ 3,062,068.38	\$ 2,232,494.78	\$ 829,573.60	-

THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO NORTHERN RAILWAY
TIDEWATER SOUTHERN RAILWAY COMPANY
DEEP CREEK RAILROAD COMPANY
OPERATING REVENUES - CORRECTED
(All Inter-Company Items Eliminated)

	MONTH OF NOVEMBER				PERIOD JANUARY 1ST TO NOVEMBER 30TH			
			Increase or Decrease				Increase or Decrease	
	1936	1935	Amount	Per Cent	1936	1935	Amount	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	1,591.09	1,596.73	.54	.35	1,591.09	1,596.73	.54	.35
OPERATING REVENUES								
Freight	\$1,351,233.81	\$1,325,930.97	25,302.84	1.91	\$13,810,176.12	\$12,202,378.41	\$1,607,797.71	13.18
Passenger	54,432.70	55,638.58	-1,205.88	-2.17	750,527.85	677,592.79	72,935.06	10.76
Mail	4,313.88	4,287.37	46.51	1.09	45,927.31	45,563.29	3,363.98	7.34
Express	6,583.00	4,361.48	4,221.52	96.78	120,357.43	93,625.37	27,242.06	29.10
Dining Car, Hotel & Restaurant	4,586.98	4,428.37	158.59	3.58	67,685.31	59,402.98	8,286.33	13.94
Miscellaneous	25,129.39	21,217.18	3,912.21	18.44	205,115.47	186,113.27	19,002.20	10.21
Total Railway Operating Revenues	\$1,448,279.74	\$1,415,843.95	32,435.79	2.29	\$15,000,297.49	\$13,268,676.11	\$1,731,621.38	13.05
OPERATING EXPENSES								
N. of W. & S.-Ord. and Budget	\$ 150,051.03	\$ 189,997.87	31,946.84	16.81	\$ 2,198,086.72	\$ 2,531,947.18	\$ 333,860.46	13.19
N. of W. & S.-Rehabil. Program (W.P.R.R Co.)	1,706.13	-	1,706.13	-	1,060,590.60	-	1,060,590.60	-
Total	150,757.16	189,997.87	30,240.71	15.92	3,259,677.32	2,531,947.18	726,730.14	28.70
N. of E.-Ord. and Budget	232,159.59	217,243.64	14,915.95	6.87	2,293,173.19	2,120,395.87	172,777.32	8.15
N. of E.-Rehabil. Program (W.P.R.R Co.)	35,415.01	-	38,415.01	-	516,355.38	-	516,355.38	-
Total	270,574.60	217,243.64	53,330.96	24.55	2,809,528.57	2,120,395.87	689,132.70	32.50
Power	12,723.80	14,006.64	-1,282.84	-9.15	145,803.21	145,920.04	883.17	.61
Traffic	61,305.55	58,099.14	3,206.41	5.57	667,718.64	658,625.27	11,053.37	1.68
Transportation - Mail Line	562,652.14	532,908.28	29,743.86	5.58	5,74,969.41	5,107,712.39	677,257.02	13.26
Miscellaneous Operations	7,986.33	6,405.17	1,481.16	22.96	98,645.24	79,450.40	19,154.84	24.10
General	55,178.63	53,533.07	1,645.56	3.07	406,108.20	472,774.93	133,333.27	28.20
Transportation for Inv.-Cr.	149.63	1,327.82	1,178.19	85.73	37,634.75	10,501.45	37,133.50	353.60
Total Railway Operating Expenses	\$1,130,118.58	\$1,070,955.99	59,162.59	5.52	\$13,324,815.64	\$11,104,434.63	\$2,220,381.01	20.00
NET REVENUE FROM RAILWAY OPERATIONS	\$ 316,161.16	\$ 344,887.96	26,726.80	7.75	1,675,481.85	2,164,241.48	488,759.63	22.54
Excise and Use Tax Accruals-Ord. and Budget	\$ 29,294.40	\$ -	\$ 29,294.40	-	\$ 294,464.40	\$ -	\$ 294,464.40	-
Excise and Use Tax Accruals-Rehabil. Program (W.P.R.R Co.)	365.30	-	365.30	-	33,485.50	-	33,485.50	-
Railway Tax Accruals-All Other	47,167.58	\$ 89,852.18	3,664.58	7.21	640,851.25	685,870.26	45,019.01	6.56
Railway Operating Income	\$ 241,313.88	\$ 294,035.80	52,721.92	17.93	\$ 806,680.70	\$ 1,478,371.22	771,690.51	32.20
Hire of Equipment - Net Debit	\$ 124,373.82	\$ 134,419.25	10,045.73	7.47	\$ 1,063,448.69	\$ 1,015,046.65	\$ 48,402.03	4.77
Joint Facility Rents - Net Credit	9,111.51	10,582.74	1,471.23	13.90	118,976.73	108,968.42	5,008.31	4.60
Net Railway Operating Income	\$ 126,051.87	\$ 170,169.29	44,117.42	26.34	\$ 242,791.25	\$ 572,292.98	\$ 815,084.24	-
NON-OPERATING INCOME								
Rental of Property	\$ 34,791.29	\$ 38,730.18	3,938.89	10.10	\$ 396,607.53	\$ 442,554.52	\$ 45,946.29	10.38
Interest Accruals	1,609.42	1,514.35	95.07	6.28	16,196.91	16,100.10	96.81	.60
Miscellaneous	1.00	1.00	-	-	126.08	344.55	218.47	62.41
Total Non-Operating Income	\$ 36,401.71	\$ 40,215.53	3,813.82	9.48	\$ 412,930.52	\$ 488,999.17	\$ 45,068.65	40.04
GROSS INCOME	\$ 164,453.58	\$ 210,414.82	47,961.24	22.39	\$ 170,159.26	\$ 1,031,292.15	\$ 861,152.89	87.50
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rent	2,713.59	2,672.78	40.81	1.53	28,187.55	38,643.62	9,456.07	25.91
Miscellaneous Tax Accruals	4,368.06	4,665.21	497.15	10.22	46,550.88	44,455.81	2,095.07	4.71
Amortization of Discount	11,733.25	11,890.94	157.69	1.33	129,578.05	131,551.06	1,973.01	1.50
Miscellaneous	3,169.32	3,883.12	773.80	19.93	31,247.19	36,107.72	4,860.53	13.46
Total Miscellaneous Deductions	\$ 21,924.22	\$ 23,512.65	1,387.83	5.35	\$ 235,563.67	\$ 250,158.21	\$ 14,594.54	5.78
AVAILABLE FOR INTEREST	\$ 140,529.36	\$ 187,102.77	46,573.41	24.89	\$ 65,424.41	\$ 781,133.94	\$ 846,558.35	-
Interest on Funded Debt	\$ 175,244.10	\$ 278,160.24	2,915.14	1.05	\$ 3,039,949.36	\$ 3,071,557.95	\$ 31,508.60	1.03
Interest on Unfunded Debt	13,113.64	3,383.03	9,732.61	287.69	104,524.93	36,511.26	68,013.73	186.28
Total Interest Deductions	\$ 208,359.74	\$ 381,543.27	6,816.47	1.42	\$ 3,144,474.35	\$ 3,108,069.22	\$ 36,405.13	1.17
NET INCOME	\$ 147,870.38	\$ 84,440.50	37,389.88	-	\$ 3,209,498.76	\$ 2,326,935.28	\$ 882,963.48	-

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Accounting Department
San Francisco, Calif.
January 5th, 1937.

Folsom-San Joaquin Rd.

THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO RAILROAD COMPANY
THE WESTERN PACIFIC RAILWAY COMPANY
THE WESTERN PACIFIC COMPANY
(All figures in dollars and cents)

ITEM OR ACCOUNT	MONTH OF DECEMBER				PERIOD JANUARY 1ST TO DECEMBER 31ST			
			Increase or Decrease				Increase or Decrease	
	1938	1939	Amount	Per Cent	1938	1939	Amount	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	1,391.09	1,398.79	.84	.05	1,391.09	1,398.79	.84	.05
<u>OPERATING REVENUE</u>								
Freight -								
Passenger	\$1,404,499.50	\$1,130,150.66	-\$ 409,348.34	-30.17	\$15,364,579.25	\$15,347,559.37	-\$ 117,146.01	-15.00
Mail	20,146.75	20,059.31	-\$ 886.44	-4.38	500,072.50	730,080.10	\$ 230,007.60	10.87
Express	5,042.78	5,975.19	\$ 932.41	+18.57	51,970.07	55,430.48	\$ 3,460.41	6.21
Dining Car, Hotel & Restaurant	5,717.12	7,306.00	\$ 1,588.88	+26.31	139,584.35	100,931.37	-\$ 39,652.98	-28.59
Miscellaneous	4,318.50	4,457.61	\$ 139.11	+3.08	72,199.81	69,880.59	-\$ 3,319.22	-13.06
Total Railway Operating Revenues	\$1,427,048.81	\$1,130,209.83	-\$ 416,839.98	-36.81	\$16,347,343.70	\$16,390,400.66	\$ 42,157.96	11.08
<u>OPERATING EXPENSES</u>								
M. of F. & S.-Ord. and Budget	\$ 199,960.00	\$ 181,590.67	-\$ 18,369.33	-25.78	\$ 2,300,069.75	\$ 2,500,337.55	\$ 200,268.10	10.57
M. of F. & S.-Rehabil. Program (W.P.R.R Co.) Note "A"	2,429.51	2,429.51	-\$ 0.00	-	1,000,151.09	-	1,000,151.09	-
Total	197,948.51	181,590.67	-\$ 16,357.84	-22.85	2,406,220.64	\$ 2,600,337.55	\$ 202,117.91	8.02
M. of E.-Ord. and Budget	196,756.50	192,997.50	\$ 6,241.00	+1.48	2,400,920.47	\$ 2,513,293.75	\$ 112,373.74	7.80
M. of E.-Rehabil. Program (W.P.R.R Co.) Note "A"	11,020.00	11,020.00	-\$ 0.00	-	327,370.00	-	327,370.00	-
Total	208,776.50	192,997.50	-\$ 15,779.00	-7.80	3,018,300.45	\$ 3,132,293.75	\$ 103,993.30	8.00
Power	13,112.80	15,108.24	\$ 1,995.44	+15.56	159,916.01	159,028.50	-\$ 908.51	-0.56
Traffic	50,161.90	50,729.99	\$ 6,568.09	+1.37	725,000.00	718,452.26	-\$ 6,547.74	-1.46
Transportation - Mail Line	504,250.15	473,142.57	-\$ 31,107.58	-6.20	8,500,000.00	8,500,000.00	-\$ 0.00	0.00
Miscellaneous Operations	7,616.35	6,759.89	-\$ 856.46	-10.34	106,261.59	96,270.59	-\$ 9,991.00	-22.17
General	58,549.13	58,764.75	\$ 2,215.62	+4.00	684,987.32	680,929.75	-\$ 6,057.53	-8.75
Transportation for Inv.-Cr.	1,064.00	1,775.72	\$ 711.72	+12.34	49,100.70	18,876.17	-\$ 30,224.53	-60.75
Total Railway Operating Expenses	\$1,194,450.00	\$ 960,854.59	-\$ 234,595.41	-17.10	\$16,448,274.00	\$18,064,400.82	\$ 1,616,126.82	10.76
<u>NET REVENUE FROM RAILWAY OPERATIONS</u>	422,587.33	170,354.94	-\$ 252,232.39	-167.77	2,090,000.10	\$ 2,354,798.45	\$ 264,798.34	10.14
Hire and Use Tax Assessments-Ord. and Budget	\$ 30,987.50	\$ 11,487.50	-\$ 19,500.00	-150.70	\$ 325,420.54	\$ 311,687.50	-\$ 13,743.00	-
Hire and Use Tax Assessments-Rehabil. Program (W.P.R.R Co.)	20.00	20.00	-\$ 0.00	-	35,516.00	-	35,516.00	-
Hire and Use Tax Assessments-All Other	45,575.00	45,575.00	-\$ 0.00	-	500,820.00	700,847.68	\$ 200,027.68	40.00
Railway Operating Income	\$ 343,199.32	\$ 105,390.94	-\$ 238,808.38	-228.00	4,164,677.00	\$ 1,024,781.65	-\$ 334,894.44	33.75
Hire of Equipment - Net Debit	118,557.00	107,510.50	-\$ 11,046.50	-9.38	1,179,500.00	1,122,500.00	-\$ 57,000.00	5.08
Joint Facility Rents - Net Credit	15,147.22	18,078.60	\$ 2,931.38	+12.77	187,120.00	186,041.02	-\$ 868.98	-0.49
Net Railway Operating Income	\$ 340,500.00	\$ 16,147.32	-\$ 238,152.68	-1	2,505.68	\$ 500,440.00	-\$ 259,935.32	100.43
<u>NON-OPERATING INCOME</u>								
Rental of Property	\$ 37,480.00	\$ 38,320.24	\$ 540.24	+1.43	434,837.50	\$ 400,928.75	-\$ 33,909.25	-8.71
Interest Assessments	1,671.17	1,631.39	-\$ 39.78	-2.37	17,000.00	17,521.49	\$ 521.49	1.98
Miscellaneous	3.00	322.26	\$ 322.26	+100.00	100.00	100.00	-\$ 0.00	0.00
Total Non-Operating Income	\$ 39,854.17	\$ 40,130.69	\$ 276.52	+0.68	452,324.00	\$ 400,120.00	-\$ 52,204.00	-5.40
<u>GROSS INCOME</u>	\$ 279,586.75	\$ 24,266.31	-\$ 255,320.44	-418.00	\$ 460,720.01	\$ 1,000,878.16	\$ 535,849.35	58.57
<u>MISCELLANEOUS DEDUCTIONS</u>								
Miscellaneous Rents	\$ 2,730.16	\$ 2,847.41	\$ 117.25	+4.12	30,617.00	\$ 40,581.00	\$ 9,964.00	24.39
Miscellaneous Tax Assessments	3,878.00	4,943.04	\$ 1,065.04	+25.63	50,287.75	49,399.00	-\$ 899.75	1.66
Amortisation of Discount - Note "A"	15,672.77	11,861.98	-\$ 3,810.79	-28.99	148,450.00	145,420.00	-\$ 1,030.00	1.41
Miscellaneous	10,750.07	10,157.55	-\$ 592.52	-5.17	68,031.00	66,286.27	-\$ 1,744.73	9.15
Total Miscellaneous Deductions	\$ 35,060.50	\$ 35,530.79	\$ 470.29	+10.04	260,627.00	\$ 270,906.77	\$ 11,281.77	4.08
<u>AVAILABLE FOR INTEREST - Note "A"</u>	\$ 244,520.12	\$ 26,455.45	-\$ 228,064.67	-	161,101.71	\$ 200,800.00	\$ 39,698.29	77.53
Interest on Funded Debt	\$ 274,819.50	\$ 277,730.34	\$ 3,910.84	+1.05	8,310,700.71	\$ 3,349,890.00	-\$ 34,521.99	-1.03
Interest on Unfunded Debt	19,046.34	19,207.50	\$ 166.16	-	184,107.35	39,768.01	\$ 6,300.48	211.04
Total Interest Deductions	\$ 294,461.60	\$ 291,010.99	\$ 13,550.39	+4.76	8,498,890.04	\$ 3,309,089.81	-\$ 49,700.00	-1.67
<u>NET INCOME</u>	\$ 47,875.37	\$ 254,564.34	-\$ 206,688.97	-	\$ 3,257,774.33	\$ 2,563,499.82	-\$ 674,274.51	-

NOTE "A"

For comparison with estimates filed as Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Docket No. 10915, the amount "Available for Interest" shown above should be adjusted by the following increases:

	MARCH		APRIL	
	1938	1939	1938	1939
Operating Expense-Rehabil. Program - M. of F. & S.	\$ 2,429.51	\$ 0	\$ 1,000,151.09	\$ 0
M. of F. & S.	11,020.00	\$ 0	\$ 527,370.00	\$ 0
Amortisation of Discount on W.P.R.R Co. First Mortgage Bonds	11,861.98	\$ 11,861.98	138,401.00	138,401.00
Available for Interest - Adjusted	\$260,520.00	\$ 26,730.00	\$ 21,908,000.00	\$ 2,940,990.00

THE WESTERN PACIFIC RAILROAD COMPANY
 SACRAMENTO NORTHERN RAILWAY
 TIDEWATER SOUTHERN RAILWAY COMPANY
 DEEP CREEK RAILROAD COMPANY
 OPERATING RESULTS - COMBINED
 (All Inter-Company Items Eliminated)

ITEM OR ACCOUNT			MONTH OF JANUARY	
	1937	1936	Amount	Increase or Decrease
AVERAGE MILEAGE OF ROAD OPERATED	1,561.00	1,561.00	-	-
OPERATING REVENUES				
Freight	\$1,252,535.97	\$1,154,65	\$ 397,885.34	34.61
Passenger	55,224.76	59,931.70	-4,706.94	-7.93
Mail	4,420.64	4,391.58	.35	.09
Express	4,345.00	4,336.00	.00	.14
Dining Car, Hotel & Restaurant	6,208.38	4,036.29	2,172.09	55.81
Miscellaneous	18,205.90	16,300.87	4,005.03	25.20
Total Railway Operating Revenues	\$1,541,181.85	\$1,018,104.07	\$ 523,077.58	51.73
OPERATING EXPENSES				
M. of E.-Ord. and Budget				
M. of E.-Rehabil. Program (W.P.RR Co.) Note "A"	\$ 150,781.74	\$ 154,980.09	-4,198.35	-3.71
	5,920.03	5,856.97	63.06	-
Total	143,861.71	158,837.06	-15,075.35	-7.74
M. of E.-Ord. and Budget				
M. of E.-Rehabil. Program (W.P. RR Co.) Note "A"	\$86,136.53	\$88,498.56	-2,362.03	-2.66
	80,103.77	80,073.77	30.00	-
Total	876,240.30	908,528.56	-32,788.26	-35.47
Power	13,487.99	13,238.14	251.85	1.90
Traffic	61,587.41	59,838.84	2,028.57	3.40
Transportation - Rail Line	564,572.59	464,264.00	100,308.59	25.85
Miscellaneous Operations	8,689.53	6,822.46	1,867.07	27.25
General	56,193.09	54,362.77	1,830.32	3.31
Transportation for Inv.-Cr.	912.17	831.67	80.50	9.68
Total Railway Operating Expenses	\$1,143,490.25	\$ 981,983.95	\$ 161,506.30	18.87
NET REVENUE FROM RAILWAY OPERATIONS	\$ 197,691.60	\$ 56,120.12	\$ 141,571.28	252.86
Excise and Use Tax Accruals-Ord. and Budget				
Excise and Use Tax Accruals-Rehabil. Program (W.P.RR Co.)	\$ 37,015.08	\$ 8,186.68	\$ 28,828.40	501.22
	817.63	1.50	817.33	-
Railway Tax Accruals-All Other	61,923.10	59,363.85	2,069.25	3.43
Railway Operating Income	\$ 98,435.86	\$ 8,470.71	\$ 107,965.30	-
Hire of Equipment - Net Debit	\$ 64,586.47	\$ 78,285.86	\$ 8,278.61	10.85
Joint Facility Rent's - Net Credit	\$ 2,897.58	\$ 3,682.78	3,184.26	88.09
Net Railway Operating Income	\$ 18,168.64	\$ 80,337.79	\$ 62,469.15	-
NON-OPERATING INCOME				
Rental of Property	\$ 37,088.13	\$ 40,782.11	\$ 3,733.98	9.13
Interest Accruals	2,935.57	1,382.81	1,512.76	121.80
Miscellaneous	168.00	4.00	168.00	-
Total Non-Operating Income	\$ 40,184.70	\$ 42,166.92	\$ 2,382.22	5.81
GROSS INCOME	\$ 56,323.34	\$ 58,120.07	\$ 94,489.41	-
MISCELLANEOUS DEDUCTIONS				
Miscellaneous Rents	\$ 2,683.29	\$ 2,652.34	\$ 30.95	1.17
Miscellaneous Tax Accruals	4,180.56	4,124.12	56.43	1.37
Amortization of Discount - Note "A"	14,966.21	11,881.96	3,084.25	25.96
Miscellaneous	4,657.32	5,138.87	481.57	9.37
Total Miscellaneous Deductions	\$ 28,487.37	\$ 23,797.31	\$ 4,690.06	11.30

OPERATING EXPENSES					
M. of W. & S.-Ord. and Budget	\$ 150,781.76	\$ 154,980.09	\$ 4,208.35	3.71	
M. of W. & S.-Rehabil. Program (W.P.RR Co.) Note "A"	6,820.03	956.97	7,877.00	-	
Total	143,961.71	155,937.06	13,075.35	7.74	
M. of E.-Ord. and Budget	\$26,126.53	\$26,498.35	\$1,638.18	6.45	
M. of E.-Rehabil. Program (W.P. RR Co.) Note "A"	50,103.77	30.00	50,073.77	-	
Total	76,840.30	206,528.35	57,711.95	32.47	
Power	13,487.99	13,236.14	251.85	1.90	
Traffic	51,657.41	50,698.84	2,038.57	3.40	
Transportation - Rail Line	564,278.50	464,284.00	120,008.50	25.85	
Miscellaneous Operations	8,698.35	8,328.45	1,360.75	27.25	
General	56,193.09	54,308.77	1,890.32	3.31	
Transportation for Inv.-Cr.	918.17	831.87	80.30	0.68	
Total Railway Operating Expenses	\$1,143,490.35	\$ 961,983.95	\$ 181,506.30	16.57	
NET REVENUE FROM RAILWAY OPERATIONS					
	\$ 197,691.40	\$ 86,180.12	\$ 141,571.28	222.28	
Excise and Use Tax Accruals-Ord. and Budget	\$ 37,018.08	\$ 8,158.68	\$ 30,858.40	801.22	
Excise and Use Tax Accruals-Rehabil. Program (W.P.RR Co.)	817.63	.30	817.33	-	
Railway Tax Accruals-All Other	61,483.10	59,393.85	2,089.85	3.45	
Railway Operating Income	\$ 98,435.59	\$ 8,430.71	\$ 107,866.30	-	
Hire of Equipment - Net Debit	\$ 84,864.47	\$ 78,988.95	\$ 5,878.61	10.85	
Joint Facility Rents - Net Credit	8,297.55	8,481.78	3,184.23	55.09	
Net Railway Operating Income	\$ 18,186.65	\$ 30,507.78	\$ 98,406.43	-	
NON-OPERATING INCOME					
Rental of Property	\$ 37,058.15	\$ 40,788.11	\$ 3,730.98	9.13	
Interest Accruals	8,952.87	1,388.61	1,810.98	121.00	
Miscellaneous	183.00	4.00	189.00	-	
Total Non-Operating Income	\$ 46,194.70	\$ 42,186.72	\$ 1,854.03	4.34	
GROSS INCOME					
	\$ 98,385.36	\$ 38,139.07	\$ 94,406.41	-	
MISCELLANEOUS DEDUCTIONS					
Miscellaneous Rents	\$ 2,683.39	\$ 2,682.34	\$ 30.95	1.17	
Miscellaneous Tax Accruals	4,180.55	4,124.12	56.43	1.37	
Amortization of Discount - Note "A"	14,968.21	11,881.98	3,084.25	25.06	
Miscellaneous	4,687.32	5,138.89	481.57	3.37	
Total Miscellaneous Deductions	\$ 26,457.37	\$ 25,907.31	\$ 8,690.06	11.30	
AVAILABLE FOR INTEREST - Note "A"					
	\$ 39,836.97	\$ 31,928.38	\$ 91,788.38	-	
Interest on Funded Debt	\$ 274,483.33	\$ 277,613.89	\$ 3,130.58	1.13	
Interest on Unfunded Debt	30,423.23	3,315.63	17,107.70	515.99	
Total Interest Deductions	\$ 294,906.56	\$ 280,929.42	\$ 15,977.14	4.98	
NET INCOME					
	\$ 355,070.59	\$ 342,855.90	\$ 77,788.21	-	

NOTE "A"	Operating Expense-Rehabil. Program - M. of W. & S. M. of E.	Month	
		1937	1938
For comparison with estimates filed as Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Docket No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:			
	Operating Expense-Rehabil. Program - M. of W. & S. M. of E.	\$ 8,920.03	\$ 956.97
	Amortization of Discount on W.P.RR Co. First Mortgage Bonds	50,103.77	30.00
	Available for Interest - Adjusted	11,285.44	11,285.44
		\$ 84,303.15	\$ 49,655.97

Accounting Department,
San Francisco, Calif.
March 15th, 1937.

Note - Italics denote red.

P. D. 10913
Exhibit #130

THE SOUTHERN PACIFIC RAILROAD COMPANY
SACRAMENTO-SOUTHERN RAILWAY
OPERATED SOUTHERN PACIFIC COMPANY
NEW CREEK RAILROAD COMPANY
NEW CREEK RAILROAD COMPANY
(All lines Company lines eliminated)

ITEM OR ACCOUNT	MONTH OF FEBRUARY				PERIOD JANUARY 1ST TO FEBRUARY 28TH			
	1937	1936	INCREASE OR DECREASE		1937	1936	INCREASE OR DECREASE	
			AMOUNT	PCT CENT			AMOUNT	PCT CENT
AVERAGE MILEAGE OF ROAD OPERATED	1,891.09	1,891.09	-	-	1,891.09	1,891.09	-	-
GENERATING REVENUE								
Freight	\$1,804,997.90	\$ 899,167.47	\$ 294,820.46	45.04	\$ 2,407,824.76	\$ 1,745,322.12	\$ 659,502.64	39.48
Passenger	13,745.81	11,961.93	1,783.82	15.24	19,801.00	10,914.98	7,746.83	3.45
Mail	4,324.97	4,284.97	62.00	1.41	4,758.61	4,648.17	107.44	1.24
Express	8,147.81	6,822.80	1,325.61	20.90	12,402.81	10,961.20	1,421.61	16.29
Dining Car, Hotel & Restaurant	4,671.66	3,429.34	1,242.32	36.87	10,580.04	7,678.63	2,901.41	41.75
Miscellaneous	15,682.94	11,869.07	4,183.87	36.70	23,891.84	20,739.94	3,151.90	31.57
Total Railway Operating Revenue	\$1,883,974.87	\$ 899,810.81	\$ 293,764.06	42.65	\$ 2,624,724.22	\$ 1,917,914.88	\$ 706,811.84	36.88
OPERATING EXPENSES								
M. of W. & S.-Ord. and Budget								
M. of W. & S.-Rehabil. Program (W.P.A.R Co.) Note "A"	\$ 184,971.49	\$ 142,172.91	\$ 21,798.58	15.86	\$ 280,753.23	\$ 316,155.00	\$ 17,800.73	5.38
Total	185,972.61	144,930.84	21,065.27	12.77	289,827.32	320,867.80	\$ 8,940.02	2.80
M. of E.-Ord. and Budget								
M. of E.-Rehabil. Program (W.P.A.R Co.) Note "A"	\$20,964.14	\$ 186,372.97	\$ 24,821.17	18.82	447,090.67	394,771.82	\$ 52,319.85	13.25
Total	82,964.72	401.07	\$ 68,492.66		432.07	112,972.50	112,564.43	
Power	15,170.84	12,985.71	785.17	5.87	20,658.53	26,162.82	1,507.32	5.94
Traffic	56,874.32	56,637.98	236.24	.62	117,931.75	116,266.42	1,665.31	1.41
Transportation - Rail Line	562,087.15	420,491.45	142,596.70	36.43	1,167,299.74	894,788.45	272,511.29	30.46
Miscellaneous Operations	7,484.16	5,794.61	1,687.55	24.91	16,172.49	12,822.07	3,344.42	26.11
General	55,872.00	55,360.40	1,912.12	3.72	111,760.62	107,972.17	3,792.45	3.51
Transportation for Inv.-Cr.	677.90	989.80	311.70	31.80	1,890.07	1,821.87	221.20	12.69
Total Railway Operating Expenses	\$1,180,692.22	\$ 912,251.43	\$ 278,443.85	29.97	\$ 2,329,185.53	\$ 1,874,232.88	\$ 454,950.15	24.27
NET REVENUE FROM RAILWAY OPERATIONS	\$ 97,879.27	\$ 12,446.83	\$ 110,380.21	-	\$ 290,870.69	\$ 43,679.20	\$ 281,891.49	876.69
Excise and Use Tax Assessments-Ord. and Budget								
Excise and Use Tax Assessments-Rehabil. Program (W.P.A.R Co.)	\$ 34,449.79	\$ 6,341.72	\$ 30,107.07	47.67	\$ 73,444.87	\$ 12,499.40	\$ 60,945.47	487.75
Railway Tax Assessments-All Other	\$6,080.29	65,192.65	582.37	7.30	1,700.91	1,21	1,699.70	0
Railway Operating Income	\$ 1,965.90	\$ 21,277.12	\$ 63,945.11	-	\$ 100,401.52	\$ 91,407.89	\$ 19,893.61	-
Hire of Equipment - Net Debit	\$ 64,911.40	\$ 49,204.37	\$ 17,607.03	32.85	\$ 151,475.87	\$ 125,043.25	\$ 26,932.64	20.66
Joint Facility Rentals - Net Credit	5,765.84	11,605.67	4,839.13	41.70	9,044.06	11,087.48	8,023.39	45.85
Total Railway Operating Income	\$ 22,178.83	\$ 119,622.82	\$ 61,646.95	-	\$ 42,070.29	\$ 199,862.67	\$ 157,833.38	-
NON-OPERATING INCOME								
Rental of Property	\$ 26,704.62	\$ 26,284.13	\$ 2,427.71	7.51	\$ 69,754.85	\$ 75,084.24	\$ 6,301.59	8.28
Interest Accruals	6,177.23	1,681.59	4,495.64	267.34	9,110.80	3,004.20	6,106.60	203.27
Miscellaneous	3.00	3.00	-	-	146.00	7.00	139.00	-
Total Non-Operating Income	\$ 32,866.85	\$ 36,964.72	\$ 1,917.83	5.19	\$ 79,041.35	\$ 79,077.44	36.09	.09
GROSS INCOME	\$ 12,337.22	\$ 22,857.14	\$ 43,364.88	-	\$ 37,031.04	\$ 120,788.23	\$ 157,817.29	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rent	\$ 2,441.78	\$ 2,294.85	\$ 146.93	8.40	\$ 5,125.07	\$ 4,947.79	\$ 177.88	3.65
Miscellaneous Tax Assessments	4,180.50	4,124.12	56.33	1.37	8,361.10	8,248.24	112.86	1.57
Amortization of Discount - Note "A"	14,963.57	11,861.93	3,001.62	25.77	29,909.78	25,763.91	6,145.87	22.86
Miscellaneous	5,316.92	6,007.24	1,190.32	18.29	9,974.24	11,644.13	1,671.89	14.36
Total Miscellaneous Deductions	\$ 20,862.82	\$ 24,108.16	\$ 2,074.65	8.36	\$ 35,370.19	\$ 34,800.47	\$ 4,764.72	9.80
AVAILABLE FOR INTEREST - Note "A"	\$ 45,178.10	\$ 107,485.33	\$ 61,290.22	-	\$ 16,339.13	\$ 169,391.70	\$ 153,052.57	-
Interest on Funded Debt	\$ 272,846.61	\$ 276,540.29	\$ 3,693.78	1.34	\$ 647,329.94	\$ 604,154.28	\$ 62,824.34	1.23
Interest on Unfunded Debt	17,612.00	4,871.76	12,740.24	261.51	38,055.23	8,187.29	29,867.94	364.95
Total Interest Deductions	\$ 290,458.61	\$ 281,412.15	\$ 9,046.46	3.21	\$ 685,385.17	\$ 642,341.97	\$ 23,023.60	4.09
NET INCOME	\$ 336,623.71	\$ 388,877.47	\$ 52,243.76	-	\$ 601,704.30	\$ 732,733.27	\$ 130,028.97	-

NOTE "A"	Month	Period		
			1937	1936
For comparison with estimates filed as Exhibit 89 and also the record in similar form set forth by Exhibit 43 Finance Document No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:				
Operating Expense-Rehabil. Program - M. of W. S.	\$ 1,024.12	\$ 1,707.83	\$ 5,825.91	\$ 2,714.30
M. of E.	62,894.73	402.07	112,928.50	632.07
Amortization of Discount on W.P.A.R Co. First Mortgage Bonds	11,283.44	11,283.44	22,068.00	22,066.88
Available for Interest - Adjusted	\$ 29,027.19	\$ 94,029.49	\$ 112,330.54	\$ 143,878.45

THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO NORTHERN RAILWAY
TIDEWATER SOUTHERN RAILWAY COMPANY
NEW CREEK RAILROAD COMPANY
CALIFORNIA RAILROAD COMPANY
(All 1938 Company Items Eliminated)

F. D. 10913

Exhibit #132

ITEM OR ACCOUNT	MARCH OF 1937				PERIOD JANUARY 1st TO MARCH 31st			
			Increase or Decrease				Increase or Decrease	
	1937	1936	Amount	Per Cent	1937	1936	Amount	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	\$1,361.00	\$1,361.00	-	-	\$1,361.00	\$1,361.00	-	-
OPERATING REVENUES								
Freight	\$ 1,235,099.42	\$1,166,155.72	\$ 167,943.70	17.00	\$ 3,965,134.32	\$2,811,473.91	\$ 1,153,662.41	31.45
Passenger	56,822.83	55,301.71	1,521.12	2.73	184,003.43	157,162.45	26,840.98	1.77
Mail	4,364.10	4,237.20	126.90	.63	13,010.70	12,265.48	745.22	1.04
Express	17,651.96	11,410.18	6,241.78	54.70	30,144.77	21,971.32	8,173.45	37.80
Dining Car, Hotel & Restaurant	5,457.19	6,364.00	-.863.10	-15.70	12,337.48	12,260.45	6,077.00	35.15
Miscellaneous	10,901.10	14,329.61	-.561.37	-38.81	55,785.08	40,089.76	15,695.37	38.15
Total Railway Operating Revenues	\$ 1,341,866.77	\$1,147,926.72	\$ 193,940.05	16.00	\$ 3,968,422.99	\$2,855,841.30	\$ 100,581.69	35.37
OPERATING EXPENSES								
N. of W. & S.-Ord. and Budget								
N. of W. & S.-Rehabil. Program (W.P.R.R Co.) Note "A"	\$ 211,056.71	\$ 180,792.38	\$ 30,264.33	16.74	\$ 546,800.94	\$ 488,945.38	\$ 57,864.56	9.98
30,342.57	4,372.17	26,070.40	810.34		24,446.68	6,986.47	17,450.21	246.81
Total	\$21,369.28	185,064.55	\$6,334.73	30.44	571,206.60	505,931.85	\$6,284.78	12.91
N. of E.-Ord. and Budget								
N. of E.-Rehabil. Program (W.P.R.R Co.) Note "A"	\$25,747.35	206,276.05	\$8,471.30	12.05	662,946.05	604,047.35	\$6,790.65	10.04
98,556.20	3,706.62	92,829.56	-		4,136.60	205,366.01	-	-
Total	\$22,283.56	\$12,986.68	119,300.88	86.01	662,272.75	606,186.07	\$56,106.68	46.73
Power	13,782.72	13,310.01	472.71	3.55	39,441.85	30,475.88	9,966.97	34.81
Traffic	61,426.12	59,758.06	1,668.04	2.79	181,353.85	178,082.50	3,351.35	1.87
Transportation - Rail Line	562,257.88	488,385.78	74,874.10	15.04	1,780,627.62	1,380,109.21	370,518.41	27.80
Miscellaneous Operations	8,102.85	6,900.85	1,142.00	16.41	24,276.34	19,785.92	4,490.42	22.70
General	55,905.86	54,024.85	1,881.21	2.93	167,371.48	161,997.82	5,373.66	3.32
Transportation for Inv.-Cr.	10,277.21	798.41	9,478.80	-	11,867.38	2,619.68	9,247.60	353.00
Total Railway Operating Expenses	\$ 1,094,647.06	\$1,016,684.17	\$ 77,962.89	27.34	\$ 3,623,832.55	\$2,890,866.55	\$ 732,943.64	26.35
NET REVENUE FROM RAILWAY OPERATIONS	\$ 47,010.71	\$ 121,272.58	\$ 84,262.84	64.18	\$ 342,860.40	\$ 174,951.78	\$ 167,908.68	96.89
Excise and Use Tax Accruals-Ord. and Budget								
Excise and Use Tax Accruals-Rehabil. Program (W.P.R.R Co.)	\$ 25,854.02	\$ 30,190.80	\$ 25,401.28	84.33	\$ 126,118.89	\$ 42,692.30	\$ 86,426.60	206.44
Railway Tax Accruals-All Other	1,684.60	1,328.28	1,352.48	-	3,185.00	133.43	3,058.16	2,166.46
56,408.01	58,189.38	678.63	.82	178,606.40	180,714.84	-	1.17	
Railway Operating Income	\$ 58,734.00	\$ 42,919.15	\$ 111,813.15	-	\$ 31,877.82	\$ 48,559.74	\$ 16,682.98	-
Hire of Equipment - Net Debit								
Joint Facility Rents - Net Credit	\$ 27,118.81	\$ 32,800.06	\$ 4,988.45	8.95	\$ 230,294.36	\$ 206,435.29	\$ 23,858.31	14.81
Net Railway Operating Income	\$ 142,430.45	\$ 34,300.65	\$ 108,130.41	-	\$ 184,440.75	\$ 234,187.72	\$ 49,722.97	1.30
NON-OPERATING INCOME								
Rental of Property								
Interest Accruals	\$ 36,861.82	\$ 38,099.51	\$ 780.39	2.07	\$ 108,846.68	\$ 114,150.85	\$ 5,312.37	4.83
Miscellaneous	3,130.38	1,382.68	1,857.90	138.70	12,241.18	4,386.68	7,914.50	182.98
Total Non-Operating Income	\$ 42,094.31	\$ 39,482.19	\$ 2,807.22	6.61	\$ 121,065.66	\$ 118,404.53	\$ 2,971.13	3.17
GROSS INCOME	\$ 100,406.15	\$ 5,117.04	\$ 105,523.19	-	\$ 63,375.09	\$ 115,669.19	\$ 52,294.10	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rents	\$ 2,622.00	\$ 2,630.61	\$ 18.61	.64	\$ 7,777.66	\$ 7,582.80	\$ 194.86	2.37
Miscellaneous Tax Accruals	4,109.40	4,124.12	14.72	.36	12,470.50	12,372.56	\$ 98.14	.79
Amortization of Discount - Note "A"	14,821.70	11,786.09	3,081.61	26.03	44,751.48	35,824.00	9,927.48	25.98
Miscellaneous	6,836.40	6,372.21	464.19	7.38	16,810.84	16,018.34	1,797.70	6.70
Total Miscellaneous Deductions	\$ 28,420.00	\$ 24,892.03	\$ 5,528.06	14.17	\$ 81,790.38	\$ 73,749.70	\$ 8,029.78	11.36
AVAILABLE FOR INTEREST - Note "A"	\$ 128,826.74	\$ 19,774.99	\$ 109,051.25	-	\$ 145,185.37	\$ 189,186.57	\$ 44,001.32	-
Interest on Funded Debt	\$ 272,722.11	\$ 275,864.94	\$ 3,142.83	1.14	\$ 820,058.08	\$ 830,010.22	\$ 9,987.17	1.20
Interest on Unfunded Debt	18,008.10	3,904.92	14,500.18	413.71	56,040.33	11,692.21	44,348.12	379.30
Total Interest Deductions	\$ 290,737.21	\$ 279,369.86	\$ 11,387.38	14.07	\$ 876,062.38	\$ 841,711.43	\$ 34,386.95	4.08
NET INCOME	\$ 419,553.45	\$ 299,144.85	\$ 120,408.60	-	\$ 1,021,257.75	\$ 1,030,878.12	\$ 9,620.37	-

NOTE "A"

For comparison with estimates filed as Exhibit 20 and also the record set forth by Exhibit A5 Finance Docket No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:

Operating Expense-Rehabil. Program - N. of W. - S.
- N. of E.
Amortization of Discount on W.P.R.R Co. First Mortgage Bonds Available for Interest - Adjusted.

Month	Period	
	1937	1936
	\$ 30,342.57	\$ 4,272.17
	\$ 36,536.20	\$ 3,706.62
	\$ 11,883.44	\$ 11,382.44
	\$ 9,355.97	\$ 12.75
	\$122,666.31	\$144,191.21

Note - Italics denote red.

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Accounting Department,
San Francisco, Calif.
May 11, 1937

THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO NORTHERN RAILWAY
TIDEWATER SOUTHERN RAILWAY COMPANY
LEAF CREEK RAILROAD COMPANY
OPERATING RESULTS - COMBINED
(All Inter-Company Items Eliminated)

F. D. 10913

Exhibit #133

ITEM OR ACCOUNT	MONTH OF APRIL				PERIOD JANUARY 1st TO APRIL 30th			
			Increase or Decrease				Increase or Decrease	
	1937	1936	Amount	Per Cent	1937	1936	Amount	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	1,591.09	1,591.09	-	-	1,591.09	1,591.09	-	-
OPERATING REVENUE								
Freight	\$ 1,237,951.55	\$ 1,044,436.45	\$ 183,515.10	17.57	\$ 4,923,085.90	\$ 3,853,912.74	\$ 1,067,173.14	27.88
Passenger	74,385.18	82,887.80	7,502.62	11.50	332,585.02	254,637.03	78,947.97	.22
Mail	4,297.98	4,250.77	47.21	1.11	17,317.77	17,156.23	161.54	.06
Express	15,800.00	11,765.12	4,042.88	34.57	48,980.77	35,784.44	12,216.33	34.81
Dining Car, Hotel & Restaurant	5,644.00	4,820.83	715.17	15.87	21,581.23	16,765.46	4,705.77	28.46
Miscellaneous	17,211.34	16,241.40	969.94	5.97	70,994.36	56,331.94	14,663.12	26.03
Total Railway Operating Revenues	\$ 1,345,092.06	\$ 1,148,105.46	\$ 196,986.60	17.18	\$ 5,311,515.05	\$ 4,213,946.76	\$ 1,097,568.29	26.06
OPERATING EXPENSES								
R. of W. & S.-Ord. and Budget	\$ 278,812.78	\$ 207,332.71	\$ 71,480.07	34.58	\$ 832,844.74	\$ 706,278.00	\$ 125,566.85	17.84
R. of W. & 1937 Rehabil. Program (W.P.RR Co) Note "A"	228,003.24	147,717.88	80,285.96	54.55	245,627.88	154,703.78	90,924.11	59.77
Total	506,816.02	355,049.99	151,566.03	42.89	1,077,872.62	860,981.84	216,890.78	23.19
R. of E.-Ord. and Budget	\$ 863,358.99	\$ 201,382.08	\$ 62,082.27	30.81	946,193.32	\$ 805,370.40	140,822.92	17.49
R. of E.-1937 Rehabil. Program (W.P.RR Co) Note "A"	76,016.90	43,686.83	32,328.07	74.00	203,581.60	47,827.52	155,754.08	407.04
Total	939,372.19	245,011.85	94,360.34	38.51	1,231,744.98	853,197.92	378,547.00	44.37
Power	12,594.03	12,961.97	367.94	2.92	82,035.28	56,457.85	26,577.43	.77
Traffic	60,328.39	56,799.46	3,529.93	6.21	241,579.14	154,821.95	8,857.18	.22
Transportation - Rail Line	572,966.28	498,409.16	74,557.12	14.96	2,352,565.90	1,776,518.37	484,076.53	24.17
Miscellaneous Operations	7,582.82	7,008.78	584.10	8.33	31,869.16	26,794.64	5,074.52	18.94
General	55,284.36	64,284.24	8,999.89	13.99	222,655.74	171,852.06	5,816.32	.36
Transportation for Inv.-Cr.	13,394.30	1,585.77	11,810.53	779.08	25,261.58	4,145.45	21,118.13	809.80
Total Railway Operating Expenses	\$ 1,842,336.89	\$ 1,237,971.82	\$ 303,365.97	24.51	\$ 5,165,169.18	\$ 4,188,861.17	\$ 1,036,308.01	26.10
NET REVENUE FROM RAILWAY OPERATIONS	\$ - 196,244.53	\$ 89,866.16	\$ 106,378.37	-	\$ 146,345.87	\$ 85,085.80	\$ 61,260.28	72.00
Excise and Use Tax Accruals-Ord. and Budget	\$ 46,748.52	\$ 34,980.35	\$ 11,768.17	33.72	\$ 175,867.41	\$ 77,652.55	\$ 98,214.86	126.40
Excise and Use Tax Accruals-1937 Rehabil. Program (W.P.RR Co)	4,065.81	9,300.70	5,234.88	56.39	7,251.40	9,434.13	2,182.73	32.14
Railway Tax accruals-All Other	50,696.14	57,944.42	7,248.30	12.51	236,304.54	236,689.28	9,354.74	3.92
Railway Operating Income	\$ 297,755.00	\$ 192,071.83	\$ 105,683.37	-	\$ 286,077.48	\$ 240,660.37	\$ 45,417.11	-
Hire of Equipment - Net Debit	\$ 81,614.37	\$ 81,662.25	\$ 37.88	.03	320,908.75	\$ 290,085.54	\$ 30,823.21	10.63
Joint Facility Rents - Net Credit	11,450.01	10,691.18	747.83	6.99	34,615.12	33,549.49	1,065.63	3.18
Net Railway Operating Income	\$ 307,930.36	\$ 283,032.70	\$ 104,897.66	-	\$ 332,371.11	\$ 497,196.42	\$ 55,174.89	-
NON-OPERATING INCOME								
Rental of Property	\$ 36,358.87	\$ 38,026.43	\$ 1,667.56	4.39	\$ 145,005.35	\$ 152,185.95	\$ 7,179.32	.43
Interest Accruals	3,330.31	1,417.61	1,912.70	134.92	15,571.49	5,744.26	9,827.20	171.08
Miscellaneous	1.00	72.80	71.80	98.63	179.00	81.60	97.40	118.83
Total Non-Operating Income	\$ 39,690.18	\$ 38,516.84	\$ 173.34	.44	\$ 160,755.84	\$ 160,011.37	\$ 2,744.47	1.74
GROSS INCOME	\$ 328,240.18	\$ 223,515.86	\$ 104,224.32	-	\$ 391,615.27	\$ 339,185.05	\$ 52,430.22	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rents	\$ 2,639.42	\$ 2,764.10	\$ 124.68	4.51	\$ 10,417.08	\$ 10,346.90	\$ 670.18	.68
Miscellaneous Tax Accruals	4,121.63	4,114.75	16.86	.41	18,802.13	16,487.11	115.02	.70
Amortization of Discount - Note "A"	14,821.70	11,760.09	3,061.61	26.03	59,585.18	47,284.09	12,269.09	26.95
Miscellaneous	5,795.04	5,696.98	95.06	1.69	22,605.68	22,717.38	1,117.64	.48
Total Miscellaneous Deductions	\$ 27,387.79	\$ 24,337.92	\$ 3,049.87	12.53	\$ 109,178.07	\$ 97,855.42	\$ 11,342.65	11.50
AVAILABLE FOR INTEREST - Note "A"*	\$ 355,637.97	\$ 247,833.78	\$ 107,774.19	-	\$ 500,793.34	\$ 437,020.47	\$ 63,773.87	-
Interest on Funded Debt	\$ 272,178.71	\$ 275,239.52	\$ 1,160.81	1.18	\$ 1,002,230.76	\$ 1,105,356.74	\$ 13,127.98	1.18
Interest on Unfunded Debt	18,666.38	5,488.84	15,177.44	435.03	74,708.61	15,381.05	59,325.56	392.10
Total Interest Deductions	\$ 290,844.99	\$ 270,828.36	\$ 12,016.63	4.31	\$ 1,076,537.37	\$ 1,120,530.79	\$ 46,397.88	4.14
NET INCOME	\$ 616,472.95	\$ 526,682.14	\$ 119,790.82	-	\$ 1,627,730.71	\$ 1,357,560.26	\$ 170,170.45	-
NOTE "A".								
For comparison with estimates filed in Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Document No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:								
* Adjusted to exclude January, February and March 1937 charges account 1936 Rehabilitation Program, amounting to \$ 6,829.02. 1937 - Italics denote red.								
Accounting Department, San Francisco, California. June 5, 1937								

THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO NORTHERN RAILWAY
TIDWATER SOUTHERN RAILWAY COMPANY
DEEP CREEK RAILROAD COMPANY
OPERATING REVENUES - COMBINED
(All Inter-Company Items Eliminated)

F. D. 10913

Exhibit #134

ITEM OR ACCOUNT	MONTH OF MAY				PERIOD JANUARY 1st TO MAY 31st							
			Increase or Decrease				Increase or Decrease					
	1937	1936	Amount	Per Cent	1937	1936	Amount	Per Cent				
AVERAGE MILEAGE OF ROAD OPERATED	1,561.09	1,561.09	-	-	1,561.09	1,561.09	-	-				
OPERATING REVENUES												
Freight	\$ 1,308,028.56	\$1,169,750.50	\$ 238,280.06	19.3%	\$ 6,321,184.46	\$5,085,570.86	\$ 1,235,613.60	25.7%				
Passenger	67,212.74	58,570.32	10,642.42	18.8%	209,707.76	200,507.32	9,190.41	3.1%				
Mail	4,307.74	4,285.68	.45.06	1.0%	21,626.51	21,400.11	226.40	1.0%				
Express	10,378.85	84,991.60	14,612.75	16.4%	56,380.62	55,726.04	2,394.42	4.0%				
Dining Car, Hotel & Restaurant	8,676.26	5,425.30	1,250.96	23.0%	28,297.49	22,290.76	6,036.73	27.17				
Miscellaneous	16,616.99	14,548.99	2,068.70	14.2%	67,611.36	70,879.53	16,731.82	23.61				
Total Railway Operating Revenues	\$ 1,503,231.14	\$1,378,507.89	\$ 225,673.25	17.8%	\$ 6,814,746.19	\$5,489,504.65	\$ 1,325,241.54	24.14				
OPERATING EXPENSES												
W. & S.-Ord. and Budget	\$ 253,141.74	\$ 224,806.18	\$ 28,336.56	12.7%	\$ 1,085,386.48	\$ 930,883.27	\$ 154,503.21	16.80				
W. & S.-1937 Rehabil. Program (W.P.R.R Co) Note "A"	245,721.15	122,231.33	122,487.82	99.40	491,340.03	277,937.06	213,411.95	76.78				
Total W. & S.	498,862.89	347,038.51	151,024.38	45.42%	1,576,735.51	1,208,820.36	367,915.16	30.44				
W. & S.-Ord. and Budget	255,930.56	201,046.35	54,884.24	27.3%	1,202,125.91	1,006,416.75	195,707.16	19.45				
W. & S.-1937 Rehabil. Program (W.P.R.R Co) Note "A"	72,370.04	51,568.12	20,801.92	40.34	357,921.64	298,598.64	268,826.00	260.10				
Total W. & S.	328,300.63	252,614.47	75,686.16	29.9%	1,560,045.55	1,205,812.36	454,233.18	41.06				
Power	12,410.53	12,475.77	.65.24	.5%	64,448.81	64,013.80	437.79	.72				
Traffic	64,169.38	63,839.45	520.90	.83	305,846.40	295,461.41	7,387.08	2.48				
Transportation - Mail Line	898,462.28	518,926.50	380,535.78	15.33%	2,931,056.18	2,367,444.87	533,611.31	22.26				
Miscellaneous Operations	8,869.62	7,709.46	1,170.16	15.30	40,758.76	34,504.50	6,254.28	18.13				
General	110,782.51	53,133.72	57,648.79	108.50	333,418.25	279,385.78	54,033.47	19.34				
Transportation for Inv.-Cr.	7,943.80	11,755.72	3,811.93	32.43	33,205.47	18,899.17	17,306.30	108.85				
Total Railway Operating Expenses	\$ 1,613,933.92	\$1,244,862.56	\$ 369,351.36	29.6%	\$ 5,779,105.10	\$4,372,442.73	\$ 1,405,659.37	28.16				
NET REVENUE FROM RAILWAY OPERATIONS	\$ 110,702.78	\$ 30,975.33	\$ 141,872.45	-	\$ 35,843.09	\$ 116,080.98	\$ 80,417.83	69.29				
Excise and Use Tax Accruals-Ord. and Budget	\$ 43,188.38	\$ 31,593.08	\$ 11,594.70	36.7%	219,058.79	\$ 109,844.23	\$ 109,809.56	100.82				
Excise and Use Tax Accruals-1937 Rehabil. Prog. (W.P.R.R Co)	3,384.58	3,440.31	954.27	27.7%	11,645.98	12,074.44	1,228.46	9.54				
Railway Tax Accruals-All Other	2,020.96	58,551.43	56,530.48	96.45	281,326.82	207,210.71	65,385.19	32.17				
Railway Operating Income	\$ 180,306.72	\$ 62,810.09	\$ 97,896.63	-	\$ 426,384.20	\$ 303,370.40	\$ 133,113.74	-				
Hire of Equipment - Net Debit	\$ 102,316.18	\$ 115,885.90	11,269.72	9.92	423,224.93	\$ 403,671.44	\$ 19,553.49	4.84				
Joint Facility Rents - Net Credit	28,918.68	14,140.45	11,778.21	65.20	60,533.70	47,689.94	12,843.84	26.23				
Net Railway Operating Income	\$ 230,704.24	\$ 182,055.54	\$ 74,645.70	-	\$ 789,075.35	\$ 659,257.96	\$ 139,823.39	-				
NON-OPERATING INCOME												
Rental of Property	\$ 34,534.07	\$ 30,365.72	\$ 4,869.65	12.34%	179,541.42	\$ 191,581.00	\$ 12,039.58	6.28				
Interest Accruals	3,067.95	1,292.66	1,775.29	137.34	18,639.44	\$ 7,036.95	11,602.49	164.86				
Miscellaneous	2,000	3,003	-	-	181.00	\$ 3.80	97.20	115.09				
Total Non-Operating Income	\$ 37,606.02	\$ 40,660.38	\$ 3,084.36	7.5%	\$ 198,361.86	\$ 198,701.75	\$ 339.89	.17				
GROSS INCOME	\$ 190,908.22	\$ 121,385.16	\$ 77,723.06	-	\$ 580,713.49	\$ 480,550.21	\$ 130,153.28	-				
MISCELLANEOUS DEDUCTIONS												
Miscellaneous Rents	2,764.80	2,552.60	212.20	8.31%	13,181.88	\$ 12,800.50	\$ 282.38	2.10				
Miscellaneous Tax Accruals	4,141.24	3,822.23	319.01	8.35%	20,745.37	\$ 20,500.84	434.03	2.14				
Amortization of Discount - Note "A"	14,821.70	11,760.09	3,061.61	26.03%	74,374.86	\$ 59,044.16	15,330.70	25.46				
Miscellaneous	5,809.19	5,985.99	376.80	6.39%	88,214.87	29,703.31	1,488.44	5.01				
Total Miscellaneous Deductions	\$ 27,326.93	\$ 24,130.91	\$ 3,216.02	13.33%	\$ 136,516.00	\$ 121,958.35	\$ 14,588.67	11.94				
AVAILABLE FOR INTEREST - Note "A"	\$ 226,425.15	\$ 145,488.07	\$ 80,949.08	-	\$ 727,228.49	\$ 582,506.84	\$ 144,721.95	-				
Interest on Funded Debt	\$ 275,617.23	\$ 275,850.84	.246.61	.08	\$ 1,367,843.99	\$ 1,301,210.50	\$ 13,374.59	.97				
Interest on Unfunded Debt	19,339.82	9,967.82	8,071.80	80.98%	92,745.93	25,146.97	67,597.06	266.73				
Total Interest Deductions	\$ 295,652.85	\$ 285,827.66	\$ 7,824.80	2.7%	\$ 1,460,580.92	\$ 1,326,357.45	\$ 14,222.47	3.86				
NET INCOME	\$ 570,087.70	\$ 431,313.73	\$ 88,773.97	-	\$ 2,187,818.41	\$ 1,988,673.99	\$ 196,940.42	-				
NOTE "A"					Month		Period					
					1937	1936	1937	1936				
Operating Expenses-1937 Rehabil. Program - W. & S.					\$ 245,721.15	\$ 122,233.33	\$ 491,540.03	\$ 277,937.08				
- W. & E.					72,370.04	\$ 1,568.12	357,921.64	\$ 9,395.61				
Amortization of Discount on W.P.R.R Co. First Mortgage Bonds Available for Interest - Adjusted					11,283.44	\$ 6,417.20	56,417.20	\$ 17,756.62				
					105,989.46	40,598.82	178,459.38					

* Credit of \$ 51,383.30 in month of May 1937, by Western Pacific Railroad Company settlement with State of Nevada for year 1931 taxes.

RTD - Journals denied red.

Accounting Department
San Francisco, California
1937.

1696

THE NORTHERN PACIFIC RAILROAD COMPANY
SACRAMENTO NORTHERN RAILWAY
TIDEWATER SOUTHERN RAILWAY COMPANY
DEEP CREEK RAILROAD COMPANY
OPERATING RESULTS - COMBINED
(All Inter-Company Items Eliminated)

ITEM OR ACCOUNT	MONTH OF JUNE				PERIOD JANUARY 1st TO JUNE, 1937			
			Increase or Decrease				Increase or Decrease	
	1937	1936	Amount	Per Cent	1937	1936	Amount	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	1,561.00	1,561.00	-	-	1,561.00	1,561.00	-	-
OPERATING REVENUES								
Freight	\$ 1,372,945.34	\$1,031,340.33	\$ 341,605.00	33.43	\$ 7,594,068.00	\$6,057,011.14	\$ 1,537,056.86	25.38
Passenger	50,170.70	72,501.70	7,330.00	9.97	372,068.46	363,809.14	16,480.32	4.53
Mail	4,225.25	3,181.55	1,043.70	34.32	28,058.76	24,551.66	1,307.10	5.35
Express	39,936.36	52,501.00	12,564.64	69.81	96,265.97	98,357.04	12,938.93	14.93
Dining Car, Hotel & Restaurant	9,264.62	7,566.35	1,698.27	22.36	37,582.11	36,817.11	7,735.00	20.94
Miscellaneous	17,469.00	21,081.18	3,612.18	17.22	105,081.23	91,980.71	13,100.52	14.22
Total Railway Operating Revenues	\$ 1,494,086.34	\$1,180,672.15	\$ 314,386.21	22.80	\$ 8,238,774.55	\$6,646,176.80	\$ 1,592,607.75	23.91
OPERATING EXPENSES								
N. of W. & S.-Ord. and Budget	\$ 274,258.06	\$ 256,725.70	\$ 18,132.36	6.24	\$ 1,369,156.86	\$1,189,808.97	\$ 179,557.89	15.09
N. of W. & S.-1937 Rehabil. Program (W.P.R.R Co) Note "A"	192,854.34	218,622.90	25,768.56	11.79	675,311.25	496,539.98	178,781.27	36.00
Total N. of W. & S.	467,712.40	477,348.60	9,636.20	2.02	2,044,448.11	1,686,165.95	358,279.16	21.25
N. of E.-Ord. and Budget	\$ 229,777.01	\$13,905.22	\$ 26,171.79	12.25	-1,441,900.92	1,280,021.97	221,879.95	18.19
N. of E.-1937 Rehabil. Program (W.P.R.R Co) Note "A"	59,058.00	66,930.62	22,134.58	35.08	446,976.84	166,316.26	280,660.38	168.75
Total N. of E.	288,835.01	280,835.84	\$ 48,306.17	17.22	1,908,977.56	1,386,338.25	522,539.33	36.28
Power	11,985.45	18,681.38	695.93	5.49	76,451.24	77,594.98	1,183.74	1.50
Traffic	64,225.70	67,750.30	3,525.60	5.22	370,072.19	366,230.80	3,851.30	1.08
Transportation - Mail Line	545,407.55	476,067.24	69,310.31	18.76	3,486,563.73	2,873,532.11	623,021.62	21.58
Miscellaneous Operations	11,737.81	9,976.10	1,761.11	17.65	52,495.99	44,460.80	8,035.19	18.02
General	62,117.98	51,925.95	10,194.00	19.63	305,536.21	531,309.74	64,226.47	19.39
Transportation For Inv.-Cr.	1,790.84	1,980.30	89.44	3.73	34,996.35	17,789.47	17,236.86	97.04
Total Railway Operating Expenses	\$ 1,510,315.60	\$1,374,442.21	\$ 135,873.39	9.86	\$ 8,289,418.70	\$6,747,985.94	\$ 1,541,532.75	22.84
NET REVENUE FROM RAILWAY OPERATIONS	\$ 28,297.34	\$ 214,770.06	\$ 186,482.82	-	\$ 50,644.15	\$ 38,709.14	\$ 48,064.90	-
Excise and Use Tax Accruals-Ord. and Budget	\$ 42,082.30	\$ 34,993.60	\$ 7,088.71	22.04	981,538.18	144,139.71	117,498.47	81.82
Excise and Use Tax Accruals-1937 Rehabil. Prog. (W.P.R.R Co)	8,920.00	3,576.17	263.72	7.17	15,585.87	16,550.81	864.74	5.83
Railway Tax Accruals-All Other	52,008.87	56,559.45	2,551.18	9.48	284,333.79	355,770.16	71,438.37	20.08
Railway Operating Income	\$ 165,817.79	\$ 311,899.16	\$ 126,081.37	-	\$ 612,301.99	\$ 518,169.82	\$ 2,967.63	-
Hire of Equipment - Net Debit	\$ 87,425.75	\$ 86,401.85	\$ 963.91	1.11	510,680.00	480,182.30	30,517.40	4.19
Joint Facility Rent - Net Credit	16,378.85	13,762.02	2,986.81	21.92	76,812.31	61,041.96	15,770.35	25.84
Net Railway Operating Income	\$ 200,995.00	\$ 305,039.99	\$ 128,043.97	-	\$ 1,048,070.37	\$ 1,044,280.85	\$ 1,778.43	-
NON-OPERATING INCOME								
Rental of Property	\$ 32,382.15	\$ 34,195.95	\$ 1,813.83	5.30	211,923.55	\$ 225,775.95	13,853.47	6.14
Interest Accruals	3,507.80	1,379.97	2,117.53	150.60	22,236.94	8,416.92	13,820.02	104.19
Miscellaneous	8.00	3.00	5.00	150.00	86.80	86.80	117.74	-
Total Non-Operating Income	\$ 35,897.93	\$ 35,578.93	\$ 408.70	1.15	\$ 234,340.40	\$ 234,260.65	\$ 88.81	.03
GROSS INCOME	\$ 321,007.39	\$ 349,460.06	\$ 128,452.67	-	\$ 811,730.89	\$ 810,010.37	\$ 1,710.51	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rents	\$ 2,650.80	\$ 2,552.64	\$ 99.96	3.92	15,634.40	\$ 15,452.14	382.34	2.47
Miscellaneous Tax Accruals	4,131.64	3,182.24	309.40	8.09	24,875.01	24,131.38	743.43	3.08
Amortization of Discount - Note "A"	14,021.70	11,760.09	3,061.61	26.03	99,196.58	70,804.27	18,392.31	25.98
Miscellaneous	6,765.87	5,159.72	1,605.55	10.19	34,980.14	35,843.03	882.89	3.01
Total Miscellaneous Deductions	\$ 28,571.21	\$ 24,274.60	\$ 4,096.52	16.88	\$ 164,886.71	\$ 146,211.05	\$ 18,655.19	12.78
AVAILABLE FOR INTEREST - Note "A"	\$ 348,378.60	\$ 373,734.75	\$ 24,356.15	-	\$ 976,807.09	\$ 956,241.39	\$ 20,565.80	-
Interest on Funded Debt	\$ 274,074.86	\$ 277,721.58	\$ 1,329.72	.48	\$ 1,621,918.65	\$ 1,626,553.16	\$ 14,634.81	.08
Interest on Unfunded Debt	17,770.87	13,112.50	4,657.39	35.88	110,516.80	38,281.45	72,234.75	198.84
Total Interest Deductions	\$ 291,844.93	\$ 298,447.16	\$ 3,307.77	1.18	\$ 1,752,474.65	\$ 1,664,514.81	\$ 87,620.24	3.40
NET INCOME	\$ 847,223.53	\$ 803,181.81	\$ 120,958.32	-	\$ 2,729,041.94	\$ 2,651,058.96	\$ 77,985.04	-

NOTE "A"

For comparison with estimates filed in Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Docket No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:

Accounting Department,
San Francisco, California
August 3, 1937

Operating Expenses-1937 Rehabil. Program - N. of W. & S.
Amortisation of Discount on W.P.R.R Co. First Mortgage Bonds
Available for Interest - Adjusted

Month	Period			
	1937	1936	1937	1936
	\$191,854.84	\$218,622.90	\$675,311.25	\$496,556.28
	89,055.00	66,920.82	446,976.84	166,316.28
	11,283.44	11,283.44	67,700.84	67,700.84
	43,814.38	76,907.79	213,381.44	225,884.41

THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO TO PORTER RAILWAY
TODD & SOUTHERN RAILWAY COMPANY
DUPONT RAILROAD COMPANY
CITRUSVILLE RAILROAD COMPANY
(All Inter-Company Items Eliminated)

V. D. 10913

Exhibit #136

TYPE OR ACCOUNT	MONTH OF JULY				PERIOD JANUARY 1 TO JULY 31			
			Increase or Decrease				Increase or Decrease	
	1937	1936	Amount	Per Cent	1937	1936	Amount	Per Cent
VERAGE MILEAGE OF ROAD OPERATED	1,591.09	1,591.09	-	-	1,591.09	1,591.09	-	-
<u>OPERATING REVENUES</u>								
Freight	1,309,354.89	1,309,354.89	0	0.00	9,499,707.87	7,366,375.30	2,132,332.47	30.87
Passenger	88,002.06	85,222.89	2,780.19	3.39	458,050.54	448,722.38	10,328.15	4.31
Mail	4,754.47	4,262.27	7.90	.18	30,113.23	28,612.83	1,499.30	4.51
Express	6,360.48	6,167.00	193.48	3.14	102,826.45	98,494.04	14,332.41	15.97
Dining Car, Hotel & Restaurant	10,341.86	9,855.13	486.55	7.11	47,989.79	39,452.34	8,421.55	21.34
Miscellaneous	10,130.84	20,662.40	1,531.56	7.41	184,192.07	112,623.11	11,568.96	10.87
Total Railway Operating Revenues	1,478,814.46	1,435,333.95	12,510.55	.87	9,861,589.95	8,084,510.75	1,777,079.20	19.51
<u>OPERATING EXPENSES</u>								
W. of W.A.S.-Ordinary and Budget	8 270,125.15	214,418.80	55,704.35	25.98	1,639,259.99	1,404,647.77	235,222.22	16.75
W. of W.A.S.-1937 Rehabil. Program (W.P.R.R Co) Note "A"	194,470.86	192,405.82	2,015.22	1.05	859,732.09	846,985.80	100,750.49	26.24
Total W. of W.A.S.	461,595.97	406,824.62	57,719.35	14.19	2,506,982.08	2,092,635.77	415,366.71	19.56
W. of E.-Ordinary and Budget	8 261,353.91	190,621.20	62,732.71	31.98	1,703,254.83	1,419,643.17	284,611.66	20.06
W. of E.-1937 Rehabil. Program (W.P.R.R Co) Note "A"	63,959.87	67,952.56	3,994.29	5.89	510,975.91	524,769.92	276,886.09	118.10
Total W. of E.	325,313.18	258,574.76	66,739.42	22.03	2,214,190.74	1,932,912.99	561,277.75	33.96
Power	15,463.35	15,386.46	99.89	.72	90,994.59	90,981.44	1,003.85	1.17
Traffic	62,086.26	63,974.31	1,888.05	2.98	632,138.45	630,125.11	1,943.34	.45
Transportation - Mail Lines	364,094.61	503,844.59	150,250.48	15.93	4,070,648.54	3,777,376.30	293,272.04	20.82
Miscellaneous Operations	12,301.54	12,370.77	369.23	2.94	64,697.53	57,081.37	7,616.16	13.40
General	59,763.69	55,081.36	5,682.31	11.08	454,399.90	384,731.12	70,668.78	18.23
Transportation for Investment-Cr.	2,656.17	17,972.19	11,816.02	62.42	37,458.50	31,751.66	5,710.94	16.03
Total Railway Operating Expenses	3,158,090.63	2,306,804.30	811,286.33	16.22	9,807,509.33	8,084,090.24	1,723,419.09	21.77
<u>NET REVENUE FROM RAILWAY OPERATIONS</u>	8 85,276.23	129,129.65	324,400.88	-	8 145,920.38	30,420.31	176,340.89	-
Excise and Use Tax Accruals-Ordinary and Budget	8 323,307.88	30,157.93	381,050.52	-	8 38,130.59	172,297.54	134,167.05	77.87
Excise and Use Tax Accruals-1937 Rehabil. Prog. (W.P.R.R Co)	10,585.08	3,799.88	6,795.36	178.78	26,168.89	20,330.27	5,818.62	26.59
Railway Tax Accruals - All Other	87,346.74	61,313.06	3,933.34	6.45	341,760.53	417,282.74	75,462.71	18.07
Railway Operating Income	8 60,101.80	35,888.90	26,442.82	58.55	352,100.39	379,510.44	27,410.25	-
Hire of Equipment - Net Debit	8 102,306.94	103,712.10	1,406.25	1.38	812,987.43	593,876.48	19,111.15	3.22
Joint Facility Rents - Net Credit	1,780.46	2,466.03	705.13	38.36	79,593.19	65,527.97	15,065.22	23.71
Net Railway Operating Income	8 40,424.46	45,598.30	25,143.74	-	3 1,096,494.83	8 1,109,859.75	23,364.38	-
<u>NON-OPERATING INCOME</u>								
Rental of Property	8 34,553.46	35,414.13	576.67	1.63	246,761.01	261,191.09	14,430.08	5.53
Interest Accruals	2,396.57	1,308.64	1,079.93	82.52	24,625.51	9,725.56	14,899.95	153.20
Miscellaneous	7.00	12.00	5.00	41.67	196.00	96.00	97.00	96.38
Total Non-Operating Income	8 37,953.03	36,774.77	400.26	1.08	271,382.52	271,015.45	367.07	.11
<u>GROSS INCOME</u>	8 3,191.43	32,833.43	25,642.00	-	8 814,912.31	8 839,843.70	25,931.39	-
<u>MISCELLANEOUS DEDUCTIONS</u>								
All Miscellaneous Rents	8 2,305.10	2,610.80	105.50	4.04	18,359.88	18,082.94	295.94	1.53
Miscellaneous Tax Accruals	3,613.99	4,509.10	1,045.89	2.33	29,479.00	28,642.80	846.22	2.66
Amortization of Discount - Note "A"	14,921.70	11,760.09	3,061.61	26.06	104,018.28	95,584.36	21,433.92	22.98
Miscellaneous	6,994.45	5,540.73	1,153.72	20.82	41,874.59	41,323.76	560.83	.70
Total Miscellaneous Deductions	8 26,855.84	24,420.52	4,214.75	17.26	192,521.45	170,681.54	22,869.91	13.40
<u>AVAILABLE FOR INTEREST - Note "A"</u>	8 324,218.43	342,269.76	16,051.31	-	8 1,096,493.78	8 1,099,495.24	3 1,061.48	-
Interest on Funded Debt	8 274,498.41	275,749.11	1,255.70	.45	8 1,916,411.06	8 1,935,302.57	3 18,891.21	.82
Interest on Unfunded Debt	17,899.37	13,266.70	4,632.67	34.92	128,415.57	51,528.15	76,747.42	149.21
Total Interest Deductions	8 292,391.78	289,015.81	3,375.97	1.17	8 2,044,826.63	8 2,063,830.42	3 60,986.21	3.07
NET INCOME	8 324,218.43	342,269.76	16,051.31	-	8 3,053,260.39	8 3,293,325.46	3 59,934.73	-
<u>NOTE "A"</u>								
For comparison with estimates filed as Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Docket No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:								
Operating Expense-1937 Rehabil. Program - W. of E. & S.	194,420.84	192,405.62	869,722.08	869,965.60				
Amortization of Discount on W.P.R.R Co. First Mortgage Bonds Available for Interest - Adjusted	65,959.23	67,925.36	510,935.91	524,269.82				
	12,373.44	11,293.44	79,984.08	78,994.08				
	277,836.00	217,839.87	451,919.35	72,275.74				

*Include credit of \$ 216,261.69 by cancellation of accruals for year 1936 under Railroad Retirement Tax Act of 1935 and credit of \$ 27,869.61 re adjustment of accruals for period January 1 to July 31, 1937 to basis of "Carriers Taxing Act of 1937".

NOTE - Balances shown red.
Accounting Department
San Francisco, California
September 10, 1937

1698

P. D. 10913

Exhibit #37

THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO-SOUTHERN RAILWAY
TITANATES SOUTHERN RAILWAY COMPANY
DEEP CREEK RAILROAD COMPANY
OPERATING RESULTS COMBINED
(All Inter-Company Items Eliminated)

ITEM ON ACCOUNT	MONTH OF AUGUST				PERIOD JANUARY 1 TO AUGUST 31			
			Increase or Decrease				Increase or Decrease	
	1937	1936	Amount	Per Cent	1937	1936	Amount	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	1,591.06	1,591.06	-	-	1,591.06	1,591.06	-	-
OPERATING REVENUE								
Freight	\$ 1,536,151.22	\$ 1,496,561.17	\$ 39,590.05	2.65	\$ 10,424,854.09	\$ 8,862,936.57	\$ 1,561,917.52	17.68
Passenger	59,677.36	62,662.06	-\$ 2,984.50	-7.28	552,737.85	551,504.58	10,235.31	4.77
Mail	4,153.84	4,271.18	-\$ 117.34	-3.75	34,267.07	35,066.12	1,181.96	3.57
Express	4,307.56	8,589.61	-\$ 2,282.05	-26.43	106,934.50	98,063.65	11,870.85	12.49
Dining Car, Hotel & Restaurant	10,629.85	9,809.06	\$ 820.57	8.37	58,523.44	49,281.32	9,242.12	18.78
Miscellaneous	24,823.10	21,183.32	\$ 3,639.78	17.18	149,015.17	133,906.43	15,108.74	11.37
Total Railway Operating Revenues	\$ 1,668,743.01	\$ 1,621,056.92	\$ 47,686.09	2.94	\$11,330,331.96	\$ 9,705,867.67	\$ 1,624,764.29	16.74
OPERATING EXPENSES								
M. of W. & S.-Ordinary and Budget								
M. of W. & S.-Rehabil. Prog. (W.P.RR Co) Note "A"	\$ 306,859.66	\$ 213,320.96	\$ 93,538.70	45.78	\$ 1,945,919.65	\$ 1,617,348.73	\$ 328,570.92	20.31
130,912.49	175,787.05	-\$ 44,874.56	-25.57	1,000,644.58	964,752.65	135,891.93	15.71	
Total M. of W. & S.	437,872.15	309,108.01	\$ 48,464.14	12.46	2,946,564.23	2,482,101.38	464,462.85	18.71
M. of E.-Ordinary and Budget								
M. of E.-Rehabil. Prog. (W.P.RR Co) Note "A"	\$ 276,805.80	\$ 18,340.51	\$ 58,465.29	26.78	1,980,040.63	1,636,982.88	343,076.95	20.96
71,577.68	70,987.62	-\$ 720.06	-1.02	582,513.59	508,127.44	77,386.15	90.01	
Total M. of E.	348,383.48	209,198.13	\$ 69,185.36	20.47	2,562,574.82	2,142,111.12	620,463.10	31.26
Power	14,565.21	14,307.60	-\$ 257.61	-1.80	104,459.80	106,269.04	-\$ 809.24	
Traffic	66,463.06	58,268.90	\$ 8,196.16	14.07	498,803.51	488,454.01	10,139.50	2.08
Transportation - Mail Line	632,582.13	567,946.07	\$ 64,634.06	11.38	4,713,230.67	3,945,324.57	767,906.10	19.46
Miscellaneous Operations	12,168.22	11,947.45	-\$ 240.77	-2.02	76,885.75	68,996.82	7,886.95	11.43
General	65,317.68	54,511.71	\$ 8,805.97	16.15	517,717.58	438,842.83	79,874.75	17.97
Transportation for Investment - Cr.	9,501.09	3,197.19	\$ 6,303.90	66,983.59	34,888.95	12,094.74	34.70	
Total Railway Operating Expenses	\$ 1,568,872.84	\$ 1,302,162.68	\$ 165,410.16	13.87	\$11,373,082.17	\$ 9,436,252.92	\$ 1,936,829.25	20.83
NET REVENUE FROM RAILWAY OPERATIONS	\$ 103,170.17	\$ 23,804.24	\$ 135,724.07	56.81	\$ 42,750.21	\$ 260,314.75	\$ 312,064.96	-
Excise & Use Tax Accruals-Ordinary & Budget	\$ 43,073.84	\$ 32,911.73	\$ 10,162.11	40.88	\$ 81,204.43	\$ 205,209.37	\$ 124,004.94	50.43
Excise & Use Tax Accruals-1937 Rehabil. Prog. (W.P.RR Co)	6,986.15	3,430.55	\$ 3,555.60	103.65	55,156.04	25,780.82	9,374.22	39.48
Railway Tax Accruals-All Other	56,808.09	61,072.56	-\$ 4,464.47	-7.05	397,488.62	478,355.90	80,887.18	16.91
Railway Operating Income	\$ 2,497.91	\$ 141,470.40	\$ 163,977.31	-	\$ 84,598.30	\$ 436,031.24	\$ 116,567.05	-
Hire of Equipment-Net Debit	\$ 99,727.68	\$ 69,221.54	\$ 30,506.14	44.07	712,715.31	\$ 663,099.02	\$ 49,617.29	7.48
Joint Facility Rents-Net Credit	11,020.04	15,311.10	-\$ 3,281.06	-17.21	89,613.23	76,839.07	12,774.16	16.62
Net Railway Operating Income	\$ 91,205.55	\$ 85,368.98	\$ 176,774.51	-	\$ 1,177,700.38	\$ 1,024,290.19	\$ 153,410.19	-
NON-OPERATING INCOME								
Rental of Property	\$ 31,861.70	\$ 33,776.06	-\$ 1,894.36	-5.41	278,642.71	\$ 294,967.15	\$ 16,324.44	5.33
Interest Accruals	2,327.68	1,454.30	\$ 3.38	60.06	29,963.19	11,179.86	18,773.33	141.09
Miscellaneous	8.00	4.00	-\$ 4.00	-100.00	204.00	102.80	101.20	98.44
Total Non-Operating Income	\$ 34,217.38	\$ 35,234.36	\$ 1,016.98	2.89	\$ 305,799.90	\$ 306,249.81	\$ 449.51	.15
GROSS INCOME	\$ 16,888.17	\$ 190,803.32	\$ 177,791.49	-	\$ 871,900.48	\$ 718,040.38	\$ 153,860.10	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rents	\$ 2,067.01	\$ 2,103.00	-\$ 35.99	-1.71	20,406.59	\$ 20,165.74	\$ 240.85	1.10
Miscellaneous Tax Accruals	4,664.98	4,508.17	\$ 156.81	3.49	34,183.98	33,148.85	1,005.13	3.45
Amortization of Discount-Note "A"	14,921.70	11,760.99	\$ 3,061.61	26.03	118,839.98	94,324.45	24,515.53	25.99
Miscellaneous	5,540.25	3,972.56	\$ 1,567.69	39.46	47,214.84	45,356.32	1,868.52	4.10
Total Miscellaneous Deductions	\$ 27,093.94	\$ 22,343.92	\$ 4,750.12	21.26	\$ 220,615.39	\$ 192,986.36	\$ 27,620.03	14.31
AVAILABLE FOR INTEREST-Note "A"	\$ 84,082.11	\$ 98,459.50	\$ 182,541.61	-	\$ 1,093,515.87	\$ 911,038.74	\$ 181,480.13	-
Interest on Funded Debt	\$ 274,457.29	\$ 280,948.22	-\$ 6,490.93	-2.31	\$ 2,190,868.35	\$ 2,213,250.49	\$ 27,382.14	1.01
Interest on Unfunded Debt	17,734.66	13,236.21	\$ 4,500.45	34.00	146,152.23	64,764.36	81,387.87	136.57
Total Interest Deductions	\$ 292,193.95	\$ 294,184.43	-\$ 1,990.48	-.68	\$ 2,337,020.58	\$ 2,278,014.86	\$ 59,005.73	2.59
NET INCOME	\$ 376,276.06	\$ 195,724.93	\$ 180,551.13	-	\$ 3,429,536.45	\$ 3,188,050.58	\$ 240,485.88	-

NOTE "A"

For comparison with estimates filed as Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Docket No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:

Operating Expense-1937 Rehabil. Program - M. of W. & S.
M. of E.
Amortization of Discount on W.P.RR.Co. First Mortgage Bonds Available for Interest - Adjusted

	MONTH		PERIOD	
	1937	1936	1937	1936
\$ 130,912.49	\$ 175,787.05	\$ 1,000,644.58	\$ 864,752.65	
71,577.36	70,857.62	582,513.59	305,127.44	
11,283.44	11,283.44	90,267.52	90,267.52	
129,691.50	356,337.61	580,909.82	349,111.87	

THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO-NORTHRIDGE RAILWAY
TIDWATER-SOUTHERN RAILWAY COMPANY
DEEP CREEK RAILROAD COMPANY
OPERATING RESULTS COMBINED
(All Inter-Company Items Eliminated)

ITEM OR ACCOUNT	MONTH OF SEPTEMBER				PERIOD JANUARY 1 to SEPTEMBER 30			
			Increase or Decrease				Increase or Decrease	
	1937	1938	Amount	Per Cent	1937	1938	Amount	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	1,591.09	1,591.09	-	-	1,591.09	1,591.09	-	-
OPERATING REVENUES								
Freight	\$ 1,727,030.29	\$ 1,696,886.57	\$ 28,147.72	1.6%	\$ 12,151,984.36	\$ 10,541,866.14	\$ 1,609,086.81	15.0%
Passenger	78,565.43	78,757.37	9,192.94	1.2%	835,703.58	835,111.22	5,381.67	4.5%
Mail	4,256.05	4,247.34	8.72	.2%	36,623.13	37,328.46	1,190.67	3.3%
Express	6,072.15	6,530.54	468.39	7.5%	118,008.48	104,599.19	10,407.89	9.8%
Dining Car, Hotel & Restaurant	6,560.14	6,080.01	510.15	7.6%	67,183.88	57,381.53	9,802.35	17.1%
Miscellaneous	27,617.80	26,736.69	8,882.11	33.1%	176,832.97	184,846.13	8,010.85	14.3%
Total Railway Operating Revenues	\$ 2,864,801.87	\$ 2,818,218.42	\$ 46,583.45	1.6%	\$ 13,184,935.83	\$ 11,583,786.09	\$ 1,601,147.74	14.4%
OPERATING EXPENSES								
W. of W. & S.-Ordinary and Budget	\$ 266,968.21	\$ 224,420.09	\$ 42,148.12	15.7%	\$ 2,912,687.88	\$ 1,841,768.82	\$ 370,719.04	20.1%
W. of W. & S.-Rehabil. Prog. (W.P.R.R Co) Note "A"	41,027.00	120,963.23	87,936.23	88.1%	1,041,671.58	993,706.88	47,946.70	4.6%
Total W. of W. & S.	307,995.21	353,373.32	45,778.11	12.8%	3,954,159.44	2,883,474.70	418,694.74	14.7%
W. of E.-Ordinary and Budget	287,748.97	220,859.07	66,889.90	30.2%	2,987,809.80	1,851,481.38	436,328.55	25.0%
W. of E.-Rehabil. Prog. (W.P.R.R Co) Note "A"	47,216.38	73,834.71	26,618.33	36.0%	629,729.97	406,383.55	224,406.48	36.3%
Total W. of E.	334,965.35	294,653.78	40,271.57	13.5%	2,997,839.87	2,834,864.93	660,734.97	22.5%
Power	14,546.60	14,805.04	258.44	1.7%	119,006.40	180,072.08	1,045.68	-.8%
Traffic	62,022.30	56,636.98	3,386.68	5.7%	560,682.81	547,100.39	13,526.58	-2.4%
Transportation - Rail Line	645,762.08	615,078.30	30,683.72	8.2%	5,378,972.89	4,560,402.87	818,569.88	17.9%
Miscellaneous Operations	11,790.40	11,561.34	229.06	1.9%	86,676.15	80,540.16	6,115.99	10.0%
General	60,968.96	58,916.73	8,052.24	15.0%	578,706.54	491,789.85	86,946.99	17.6%
Transportation for Inv.-Cr.	845.78	3,750.53	7,907.05	77.5%	47,797.37	38,800.88	9,107.50	23.8%
Total Railway Operating Expenses	\$ 1,456,807.06	\$ 1,397,311.93	\$ 59,495.13	4.2%	\$ 12,929,289.33	\$ 10,533,564.85	\$ 1,394,324.58	14.4%
NET REVENUE FROM RAILWAY OPERATIONS	\$ 397,794.81	\$ 420,906.49	\$ 23,111.68	5.4%	\$ 385,044.60	\$ 690,291.84	\$ 335,176.64	48.5%
Excise & Use Tax Accruals-Ordinary & Budget	\$ 36,000.98	\$ 26,401.64	\$ 9,600.34	35.8%	\$ 117,808.41	\$ 251,611.01	\$ 114,402.80	49.3%
Excise & Use Tax Accruals-1937 Rehabil. Prog. (W.P.R.R Co)	3,297.00	7,511.95	4,214.95	56.1%	36,452.04	31,392.77	5,159.27	16.4%
Railway Tax Accruals - All Other	54,507.65	56,481.75	1,974.09	3.5%	451,996.28	534,837.55	82,841.27	15.4%
Railway Operating Income	\$ 303,986.17	\$ 330,511.15	\$ 26,524.98	8.0%	\$ 350,612.13	\$ 107,920.09	\$ 145,093.04	-
Hire of Equipment - Net Debit	\$ 110,266.57	\$ 130,970.87	\$ 20,704.30	18.7%	\$ 283,001.86	\$ 794,068.89	\$ 28,933.19	3.6%
Joint Facility Rents - Net Credit	14,265.47	12,740.36	1,525.12	11.9%	103,878.70	69,579.42	14,290.36	15.9%
Net Railway Operating Income	\$ 207,965.07	\$ 212,980.83	\$ 4,015.76	2.0%	\$ 949,735.31	\$ 812,009.36	\$ 157,725.85	-
NON-OPERATING INCOME								
Rental of Property	\$ 31,209.30	\$ 36,189.06	\$ 3,959.76	11.9%	\$ 309,872.10	\$ 330,156.81	\$ 20,284.11	8.1%
Interest Accruals	2,202.55	1,780.44	422.11	23.7%	29,155.74	12,980.30	16,195.44	134.9%
Miscellaneous	11.00	6.00	5.00	83.3%	215.00	108.80	106.20	97.61
Total Non-Operating Income	\$ 33,442.94	\$ 36,975.50	\$ 3,532.56	8.5%	\$ 339,242.84	\$ 343,225.31	\$ 3,982.47	1.1%
GROSS INCOME	\$ 241,406.01	\$ 249,286.33	\$ 7,880.32	3.1%	\$ 630,482.47	\$ 469,784.05	\$ 151,708.42	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rents	\$ 2,579.80	\$ 2,871.61	\$ 292.81	11.4%	\$ 22,986.19	\$ 22,837.38	\$ 148.84	.8%
Miscellaneous Tax Accruals	4,655.55	4,506.99	129.56	2.8%	38,789.53	37,654.84	1,134.69	3.0%
Amortization of Discount - Note "A"	14,021.70	11,760.09	3,061.61	26.0%	135,661.68	106,084.54	27,577.14	26.0%
Miscellaneous	9,832.71	9,995.18	172.47	-	37,392.13	36,381.14	2,030.99	5.7%
Total Miscellaneous Deductions	\$ 12,214.14	\$ 8,942.51	\$ 3,271.63	36.5%	\$ 232,829.53	\$ 201,937.87	\$ 30,931.66	15.3%
AVAILABLE FOR INTEREST - NOTE "A"	\$ 229,193.87	\$ 240,313.82	\$ 11,119.95	4.6%	\$ 863,322.00	\$ 670,721.92	\$ 192,600.08	-
Interest on Funded Debt	\$ 273,915.30	\$ 276,359.47	\$ 1,444.17	.5%	\$ 2,464,783.65	\$ 2,488,809.96	\$ 23,826.31	.9%
Interest on Unfunded Debt	14,734.02	15,100.41	3,631.61	27.7%	162,986.26	77,866.77	85,019.48	100.1%
Total Interest Deductions	\$ 290,649.32	\$ 290,461.88	\$ 2,187.44	.7%	\$ 2,627,669.90	\$ 2,566,476.73	\$ 61,193.17	2.3%
NET INCOME	\$ 81,455.45	\$ 48,148.06	\$ 13,307.39	-	\$ 3,490,991.80	\$ 3,337,198.65	\$ 353,793.25	-

NOTE "A"

For comparison with estimates filed as Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Document No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:

NOTE - Balances deleted red.

Operating Expenses-1937 Rehabil. Program - W. of W. & S.
J. M. of E.
Amortization of Discount on W.P.R.R. Co. First Mortgage Bonds
Available for Interest - Adjusted

MONTH	PERIOD			
	1937	1938	1937	1938
1937	\$ 41,027.00	\$ 128,963.23	\$ 1,041,671.58	\$ 993,706.88
1938	47,216.38	73,834.71	629,729.97	406,383.55
1937	11,283.44	11,283.44	101,580.96	101,580.96
1938	326,780.89	454,385.20	909,630.51	829,888.47

THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO-NORTHERN RAILWAY
TIDWATER-SOUTHERN RAILWAY COMPANY
DEEP CREEK RAILROAD COMPANY
OPERATING RESULTS COMBINED
(All Inter-Company Items Eliminated)

F. D. 10913

Exhibit #139

ITEM OR ACCOUNT	MONTH OF OCTOBER				PERIOD JANUARY 1 TO OCTOBER 31			
	1937	1936	Increase or Decrease		1937	1936	Increase or Decrease	
			Amount	Per Cent			Amount	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	1,591.09	1,591.09	-	-	1,591.09	1,591.09	-	-
OPERATING REVENUES								
Freight	\$ 2,064,947.50	\$ 1,897,113.17	\$ 167,834.13	8.85	\$ 14,216,931.68	\$ 12,458,942.61	\$ 1,757,989.37	14.11
Passenger	76,448.13	57,945.30	19,502.83	34.21	71,151.45	68,056.10	13,095.35	21.18
Mail	4,291.57	4,380.97	10.60	.25	42,614.70	41,613.43	1,201.27	2.89
Express	5,943.91	7,585.24	741.33	9.85	181,960.36	112,284.45	9,665.93	8.61
Dining Car, Hotel & Restaurant	7,117.96	5,765.02	1,352.94	23.47	74,301.54	63,096.36	11,205.19	17.76
Miscellaneous	26,806.74	25,443.96	1,362.78	5.36	203,439.71	179,986.06	23,453.63	13.03
Total Railway Operating Revenues	\$ 2,136,535.61	\$ 2,026,231.66	\$ 137,303.95	7.76	\$ 15,370,489.44	\$ 13,552,017.75	\$ 1,818,471.69	13.42
OPERATING EXPENSES								
M. of W. & S.-Ordinary and Budget								
M. of W. & S. 1937 Rehabil. Prog. (W.P.R.R Co) Note "A"	\$ 259,193.84	\$ 198,266.87	\$ 60,926.97	30.73	\$ 2,471,861.70	\$ 2,040,036.89	\$ 431,846.01	21.16
Total M. of W. & S.	274,839.82	243,445.46	31,395.76	4.32	3,626,936.66	3,098,820.16	420,078.50	13.88
M. of E.-Ordinary and Budget								
M. of E.-1937 Rehabil. Prog. (W.P.R.R Co) Note "A"	274,449.28	229,532.25	44,917.03	16.57	2,542,258.86	2,061,013.60	481,245.28	23.36
Total M. of E.	332,909.86	302,149.97	30,760.81	10.18	3,230,449.15	2,638,983.97	591,456.18	27.24
Power	14,108.50	14,007.35	100.95	.72	135,214.70	134,079.41	964.71	.72
Traffic	61,331.25	59,222.80	2,108.45	3.58	621,387.06	605,383.09	15,633.97	2.58
Transportation - Rail Line	751,599.91	661,914.40	95,685.51	14.46	6,136,572.60	5,222,317.27	914,256.33	17.51
Miscellaneous Operations	10,108.95	10,020.75	10.18	.10	98,786.08	90,638.91	8,128.17	8.96
General	68,099.27	59,170.02	25,929.25	43.92	643,808.81	560,989.57	222,876.24	20.48
Transportation for Investment - Cr.	18,563.55	8,075.64	3,487.91	41.55	60,360.92	47,468.32	12,878.60	27.11
Total Railway Operating Expenses	\$ 71,523,432.91	\$ 1,361,132.21	\$ 162,300.70	11.92	\$ 14,355,329.14	\$ 12,194,697.06	\$ 2,158,625.08	17.70
NET REVENUE FROM RAILWAY OPERATIONS	\$ 662,122.70	\$ 667,099.45	\$ 4,976.75	.75	\$ 1,017,167.30	\$ 1,367,320.89	\$ 340,153.39	25.04
Excise & Use Tax Accruals-Ordinary & Budget								
Excise & Use Tax Accruals-1937 Rehabil. Prog. (W.P.R.R Co.)	\$ 40,789.26	\$ 33,556.99	\$ 7,230.27	21.54	\$ 157,997.67	\$ 265,170.00	\$ 107,172.33	40.42
Railway Tax Accruals - All Other	1,936.17	1,927.43	10.74	.56	38,360.21	35,120.20	5,240.01	15.91
58,926.04	58,526.12	101.92	.17	510,924.38	593,622.37	87,738.38	13.84	
Railway Operating Income	\$ 560,400.23	\$ 572,866.91	\$ 12,477.68	2.17	\$ 309,657.10	\$ 465,366.96	\$ 155,509.72	38.42
Hire of Equipment - Net Debit								
Joint Facility Rents - Net Credit	\$ 186,516.66	\$ 145,006.48	\$ 43,510.38	30.01	\$ 1,011,518.74	\$ 939,075.17	\$ 72,443.57	7.71
12,032.25	15,288.80	3,255.55	31.82	115,910.96	104,868.22	11,045.73	10.53	
Net Railway Operating Income	\$ 383,984.62	\$ 443,166.23	\$ 59,181.61	13.38	\$ 589,750.69	\$ 388,843.13	\$ 218,907.56	-
NON-OPERATING INCOME								
Rental of Property	\$ 34,387.16	\$ 31,660.03	\$ 2,727.13	8.51	\$ 344,259.36	\$ 361,816.24	\$ 17,556.98	4.83
Interest Accruals	2,205.67	1,627.19	578.48	36.55	31,361.41	14,847.49	16,773.92	114.99
Miscellaneous	1.00	14.28	13.28	83.86	216.00	126.06	90.92	72.69
Total Non-Operating Income	\$ 36,593.83	\$ 33,305.80	\$ 3,290.33	9.86	\$ 378,836.87	\$ 376,526.81	\$ 692.14	.18
GROSS INCOME	\$ 420,578.45	\$ 476,469.73	\$ 55,891.28	11.73	\$ 308,914.02	\$ 7,685.68	\$ 217,599.70	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rents	\$ 2,636.61	\$ 2,636.61	\$ 2.00	.06	\$ 26,624.80	\$ 25,473.96	\$ 150.84	.59
Miscellaneous Tax Accruals	4,746.76	4,527.96	218.78	4.83	43,536.22	42,182.82	1,353.47	3.21
Amortization of Discount - Note "A"	14,964.95	11,760.26	3,204.69	27.26	148,626.85	117,844.90	30,781.95	26.12
Miscellaneous	8,359.92	7,229.37	2,030.65	-	28,132.21	28,137.87	5.66	.03
Total Miscellaneous Deductions	\$ 15,090.40	\$ 11,701.80	\$ 1,388.62	11.87	\$ 245,919.93	\$ 213,639.45	\$ 32,280.46	16.11
AVAILABLE FOR INTEREST - NOTE "A"	\$ 407,488.05	\$ 464,768.15	\$ 57,280.10	12.32	\$ 458,633.95	\$ 308,853.77	\$ 249,880.18	-
Interest on Funded Debt								
Interest on Unfunded Debt	\$ 274,438.14	\$ 276,096.30	\$ 1,657.16	.60	\$ 2,730,221.79	\$ 2,764,705.26	\$ 25,483.47	.92
17,249.86	15,542.88	3,707.98	27.37	180,136.11	91,409.35	89,728.76	97.07	
Total Interest Deductions	\$ 291,688.00	\$ 289,637.88	\$ 2,060.12	.71	\$ 2,910,387.90	\$ 2,856,114.61	\$ 63,243.29	2.21
NET INCOME	\$ 115,800.05	\$ 175,130.27	\$ 59,330.23	33.88	\$ 3,375,191.65	\$ 3,062,068.38	\$ 313,123.47	-

NOTE "A"

For comparison with estimates filed as Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Docket No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:

NOTE - Balances debited red.

Accounting Department
San Francisco, California

December 10, 1937

b

Operating Expense-1937 Rehabil. Program - M. of W. & S.
- M. of E.
Amortization of Discount on W.P.R.R.Co. First Mortgage Bonds
Available for Interest - Adjusted

MONTH

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SACRAMENTO NORTHERN RAILWAY
TIDWATER SOUTHERN RAILWAY COMPANY
LEHIGH VALLEY RAILROAD COMPANY
OPERATING RESULTS COMBINED
(All Inter-Company Items Eliminated)

F. D. 10913

Exhibit #40

ITEM OR ACCOUNT	MONTH OF NOVEMBER				PERIOD JANUARY 1 to NOVEMBER 30			
			Increase or Decrease				Increase or Decrease	
	1937	1936	Amount	Per Cent	1937	1936	Amount	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	1,591.09	1,591.09			1,591.09	1,591.09		
OPERATING REVENUES								
Freight	\$ 1,396,570.96	\$ 1,351,255.81	\$ 45,337.14	3.26	\$ 15,612,402.63	\$ 15,610,176.12	\$ 1,382,226.51	15.04
Passenger	51,665.15	54,432.70	-2,767.57	-5.06	752,816.56	750,527.85	12,288.73	1.64
Mail	4,245.04	4,315.88	-70.84	-1.63	47,058.24	45,927.31	1,130.93	2.46
Express	830.59	8,585.00	7,743.41	90.22	122,789.95	120,867.43	1,922.52	1.59
Dining Car, Hotel & Restaurant	4,851.04	4,586.96	264.08	5.76	79,155.58	67,683.31	11,469.27	16.94
Miscellaneous	22,899.70	25,129.39	-2,230.69	-8.87	226,339.41	205,115.47	21,223.94	10.36
Total Railway Operating Revenues	\$ 1,480,069.96	\$ 1,448,279.74	\$ 31,790.21	2.20	\$ 16,850,559.39	\$ 15,000,297.49	\$ 1,850,261.90	12.33
OPERATING EXPENSES								
W. of W. & S.-Ordinary and Budget	\$ 266,011.63	\$ 158,051.03	\$ 108,960.60	68.87	\$ 2,736,593.33	\$ 2,196,086.72	\$ 540,506.61	24.59
W. of W. & S.-1937 Rehabil. Prog. (W.P.R.R.Co) Note "A"	37,384.24	1,706.13	35,678.11		1,094,701.20	1,060,590.60	34,110.60	3.22
Total W. of W. & S.	304,296.87	159,757.16	144,538.71	90.47	3,833,294.53	3,286,677.32	574,617.21	17.63
W. of E.-Ordinary and Budget	316,611.84	232,160.59	84,452.25	36.30	2,856,870.72	2,293,175.19	565,697.53	24.67
W. of E.-1937 Rehabil. Prog. (W.P.R.R.Co) Note "A"	26,451.67	38,415.01	11,963.34	31.14	714,641.94	616,355.38	198,286.56	38.40
Total W. of E.	343,063.51	270,574.60	72,488.91	26.79	3,573,512.66	2,809,520.57	763,984.09	27.19
Power	13,968.22	12,723.80	1,204.42	9.47	147,042.92	146,803.21	239.71	.16
Traffic	61,681.87	51,396.55	286.32	.47	683,630.93	667,718.64	18,920.29	2.38
Transportation - Rail Line	643,440.27	582,659.14	60,797.13	14.36	6,780,021.87	5,784,965.41	996,052.46	17.20
Miscellaneous Operations	8,453.02	7,986.33	466.69	5.84	107,236.10	98,615.24	8,592.86	8.71
General	62,475.96	55,179.63	7,297.33	13.22	726,281.77	606,106.30	120,175.57	19.83
Transportation for Investment - Cr.	231.07	149.63	81.44	54.42	60,991.99	47,634.95	12,357.04	27.20
Total Railway Operating Expenses	\$ 1,437,116.65	\$ 1,130,116.58	\$ 306,996.07	27.16	\$ 16,780,436.79	\$ 13,324,815.84	\$ 2,466,623.15	16.51
NET REVENUE FROM RAILWAY OPERATIONS	\$ 42,953.30	\$ 318,161.16	\$ 275,207.86	86.49	\$ 1,060,120.60	\$ 1,675,461.85	\$ 615,361.25	-36.73
Excise & Use Tax Accruals-Ordinary & Budget	\$ 45,280.12	\$ 29,294.40	\$ 13,985.72	47.74	\$ 201,277.79	\$ 294,464.40	\$ 93,186.61	31.64
Excise & Use Tax Accruals-1937 Rehabil. Prog. (W.P.R.R.Co)	465.28	340.20	99.98	27.36	38,853.49	35,485.50	5,367.99	16.03
Railway Tax Accruals - All Other	54,461.10	47,187.58	7,263.62	15.39	565,375.42	640,851.25	75,475.83	11.77
Railway Operating Income	\$ 35,243.20	\$ 241,313.98	\$ 206,557.08	122.89	\$ 254,613.90	\$ 706,689.70	\$ 452,066.80	53.37
Hire of Equipment - Net Debit	100,346.97	124,373.52	\$ 24,026.55	19.32	1,111,865.71	1,063,446.69	\$ 46,417.02	4.55
Joint Facility Rents - Net Credit	6,161.93	9,111.51	926.56	10.20	124,092.86	113,976.73	10,116.15	8.88
Net Railway Operating Income	\$ 147,408.24	\$ 126,051.07	\$ 273,460.11	216.94	\$ 733,159.93	\$ 242,791.25	\$ 490,367.67	-
NON-OPERATING INCOME								
Rental of Property	\$ 31,826.46	\$ 34,791.29	\$ 2,964.84	8.52	\$ 376,065.71	\$ 396,607.53	\$ 20,521.82	5.17
Interest Accruals	2,208.87	1,609.42	599.45	37.24	33,570.28	16,196.91	17,375.37	107.26
Miscellaneous	1.00	1.00			217.00	126.06	90.92	72.00
Total Non-Operating Income	\$ 34,036.32	\$ 36,401.71	\$ 2,365.39	5.49	\$ 409,872.90	\$ 412,930.52	\$ 3,057.53	.74
GROSS INCOME	\$ 113,371.92	\$ 162,455.58	\$ 275,825.50	169.79	\$ 323,285.94	\$ 170,139.26	\$ 493,425.20	290.00
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rents	\$ 2,561.67	\$ 2,713.59	\$ 151.92	5.80	\$ 26,186.47	\$ 28,187.55	\$ 1,901.31	4.33
Miscellaneous Tax Accruals	4,915.00	4,366.06	547.94	10.54	46,452.19	46,530.80	57,700.23	26.01
Amortization of Discount - Note "A"	14,651.65	11,733.25	2,918.40	24.87	163,278.28	129,578.05	6,412.00	20.52
Miscellaneous	9,526.98	3,109.32	6,417.66	206.40	37,659.19	31,247.19		
Total Miscellaneous Deductions	\$ 31,656.20	\$ 21,924.22	\$ 9,731.98	44.59	\$ 277,576.13	\$ 235,663.67	\$ 42,012.46	17.83
AVAILABLE FOR INTEREST - NOTE "A"	\$ 145,028.12	\$ 140,529.36	\$ 385,557.48	203.20	\$ 600,862.07	\$ 65,424.41	\$ 535,437.56	-
Interest on Funded Debt	\$ 272,100.27	\$ 275,244.10	\$ 3,143.83	1.14	\$ 3,011,322.06	\$ 3,059,949.36	\$ 28,627.30	.94
Interest on Unfunded Debt	17,501.24	13,115.64	4,385.60	33.44	197,637.35	104,924.99	93,112.36	89.08
Total Interest Deductions	\$ 289,601.51	\$ 288,359.74	\$ 1,241.77	.43	\$ 3,208,959.41	\$ 3,144,474.35	\$ 64,405.06	2.05
NET INCOME	\$ 434,629.63	\$ 147,830.38	\$ 286,799.25	-	\$ 3,809,821.48	\$ 3,209,898.76	\$ 599,922.72	-

NOTE "A"	Operating expense-1937 Rehabil. Program - W. of W. & S.	MONTH		PERIOD	
		1937	1936	1937	1936
For comparison with estimates filed in Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Docket No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:					
Operating expense-1937 Rehabil. Program - W. of E.	\$ 37,384.24	\$ 1,706.13	\$ 1,094,701.20	\$ 1,060,590.60	
Interest on Funded Debt	26,451.67	38,415.01	714,641.94	616,355.38	
Interest on Unfunded Debt	11,285.44	11,285.44	124,117.84	124,117.84	
Amortization of Discount on W.P.R.R.Co. First Mortgage Bonds Available for Interest - Adjusted	\$ 9,908.77	\$ 191,933.94	\$ 1,332,398.91	\$ 1,630,630.41	

THE WESTERN PACIFIC RAILROAD COMPANY
 SACRAMENTO BORNEON RAILWAY
 TIMBSTER SOUTHERN RAILWAY COMPANY
 DEEP CREEK RAILROAD COMPANY
 OPERATING RESULTS COMBINED
 (All Inter-Company Items Eliminated)

ITEM OR ACCOUNT	MONTH OF INCREASE				PERIOD JANUARY 1 TO DECEMBER 31			
			Increase or Decrease.				Increase or Decrease.	
	1937	1936	Amount	Per Cent	1937	1936	Amount	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	1,591.00	1,591.00	-	-	1,591.00	1,591.00	-	-
OPERATING REVENUES								
Freight	\$ 978,440.57	\$ 1,484,492.35	\$ 478,051.78	32.87	\$ 16,986,543.80	\$ 15,984,578.30	\$ 1,002,167.50	8.47
Passenger	51,812.46	55,144.75	3,332.29	6.04	814,628.04	805,678.80	8,950.24	1.11
Mail	5,085.18	6,042.78	859.58	15.88	55,141.42	51,970.07	171.35	.33
Express	8,274.00	8,717.12	443.12	5.08	151,065.95	129,594.85	1,470.40	1.34
Dining Car, Hotel & Restaurant	3,793.10	4,516.40	723.40	16.02	92,345.88	78,199.81	10,746.07	14.98
Miscellaneous	22,518.73	18,185.98	4,332.91	24.34	348,556.14	322,941.39	25,615.85	11.67
Total Railway Operating Revenues	\$ 1,067,926.14	\$ 1,547,046.21	479,121.07	30.87	\$ 17,818,484.53	\$ 15,987,343.70	\$ 1,831,140.83	8.99
OPERATING EXPENSES								
N. of W. & S.-Ordinary and Budget	\$ 305,504.75	\$ 190,985.03	\$ 6,821.72	3.55	\$ 2,945,096.08	\$ 2,306,059.75	\$ 647,036.33	28.81
N. of W. & S.-1937 Rehabil. Prog. (W.P.R.R.Co) Note "A"	10,803.55	2,439.51	10,364.04	-	1,105,804.75	1,056,151.09	47,353.66	4.69
Total N. of W. & S.	\$ 317,308.30	\$ 197,843.52	19,764.78	10.00	4,050,806.88	3,456,220.84	594,581.99	17.80
N. of W.-Ordinary and Budget	\$ 351,582.08	\$ 186,785.88	\$ 65,795.80	38.49	\$ 3,110,582.80	\$ 2,426,029.07	\$ 691,453.33	24.97
N. of W.-1937 Rehabil. Prog. (W.P.R.R.Co) Note "A"	17,348.46	11,085.60	6,262.86	57.38	731,990.40	527,375.98	204,611.42	38.80
Total N. of W.	\$ 368,970.54	\$ 196,779.88	\$ 68,000.66	30.03	\$ 3,842,363.80	\$ 3,014,368.48	\$ 828,074.75	27.39
Power	15,497.45	15,112.80	384.65	2.95	180,040.37	150,918.01	29,122.36	.39
Traffic	50,800.88	50,161.90	6,638.98	13.22	743,439.78	720,880.84	23,559.94	3.48
Transportation - Rail Line	570,449.86	584,250.13	13,800.28	2.34	7,350,471.72	6,369,219.54	991,252.18	15.41
Miscellaneous Operations	7,871.52	7,616.36	344.82	4.53	114,500.83	108,261.59	6,239.24	7.76
General	60,644.93	56,549.13	4,095.80	7.00	705,266.70	664,857.55	124,209.37	18.70
Transportation for Investment - Cr.	2,708.36	1,584.85	1,237.53	79.59	63,384.20	49,190.78	14,194.57	29.86
Total Railway Operating Expenses	\$ 1,197,061.09	\$ 1,124,456.88	\$ 72,592.21	6.48	\$ 16,987,489.88	\$ 14,447,274.82	\$ 2,540,215.86	17.87
NET REVENUE FROM RAILWAY OPERATIONS	\$ 129,135.85	\$ 422,587.35	\$ 353,713.38	-	\$ 930,994.65	\$ 2,056,069.18	\$ 1,127,074.53	55.83
Excise & Use Tax Accruals-Ordinary & Budget	\$ 20,000.74	\$ 30,987.94	\$ 1,987.20	6.35	\$ 230,296.53	\$ 305,458.34	\$ 75,153.81	29.34
Excise & Use Tax Accruals-1937 Rehabil. Prog. (W.P.R.R.Co)	3,128.84	29.08	3,090.76	-	41,982.33	33,514.86	8,467.75	25.47
Railway Tax Accruals - All Other	53,651.33	48,373.99	5,277.34	10.91	610,000.75	600,950.84	70,150.49	10.19
Railway Operating Income	\$ 274,926.86	\$ 343,196.32	\$ 558,123.18	-	\$ 30,887.04	\$ 1,040,877.02	\$ 1,010,189.98	98.33
Hire of Equipment - Net Debit	\$ 104,456.24	\$ 116,057.95	\$ 11,601.71	10.00	\$ 1,216,301.95	\$ 1,179,506.85	\$ 36,815.30	3.18
Joint Facility Rents - Net Credit	22,070.65	13,147.22	8,923.61	67.87	146,163.71	127,125.85	19,039.76	14.98
Net Railway Operating Income	\$ 297,312.37	\$ 340,295.58	\$ 537,597.85	-	\$ 1,030,471.20	\$ 2,505.88	\$ 1,027,965.52	-
NON-OPERATING INCOME								
Rental of Property	\$ 55,777.36	\$ 37,630.00	\$ 3,852.85	10.34	\$ 409,855.06	\$ 434,237.83	\$ 24,375.47	5.61
Interest Accruals	2,206.06	1,871.17	536.89	28.13	\$ 55,778.34	\$ 17,948.08	37,910.26	100.04
Miscellaneous	256.23	5.00	256.23	-	458.23	129.08	326.15	252.87
Total Non-Operating Income	\$ 36,223.64	\$ 39,304.17	\$ 3,080.53	7.84	\$ 446,096.83	\$ 452,234.89	\$ 6,138.06	1.38
GROSS INCOME	\$ 261,086.63	\$ 279,569.75	\$ 548,576.38	-	\$ 584,374.57	\$ 449,729.01	\$ 1,034,103.58	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rents	\$ 2,776.04	\$ 2,730.14	\$ 47.90	1.76	\$ 30,964.51	\$ 30,917.89	\$ 46.82	.15
Miscellaneous Tax Accruals	4,847.25	3,676.66	1,170.40	31.83	\$ 55,299.44	\$ 50,227.73	3,071.71	6.12
Amortization of Discount - Note "A"	15,040.41	15,872.77	832.38	5.24	176,318.89	145,450.82	32,867.87	22.60
Miscellaneous	18,495.38	10,783.87	7,711.51	71.51	\$ 66,154.87	\$ 42,031.06	14,122.51	33.60
Total Miscellaneous Deductions	\$ 41,161.08	\$ 33,063.63	\$ 8,097.41	24.49	\$ 318,737.21	\$ 268,627.50	\$ 50,106.91	15.85
AVAILABLE FOR INTEREST - NOTE "A"	\$ 302,242.71	\$ 246,526.12	\$ 544,713.43	-	\$ 309,111.78	\$ 131,101.71	\$ 1,064,213.49	-
Interest on Funded Debt	\$ 273,129.63	\$ 274,819.36	\$ 1,689.12	.61	\$ 3,264,451.69	\$ 3,314,768.71	\$ 30,317.02	.91
Interest on Unfunded Debt	17,453.49	19,582.34	2,138.85	10.87	\$ 215,090.84	\$ 124,107.33	90,983.51	73.31
Total Interest Deductions	\$ 290,583.12	\$ 294,401.69	\$ 3,818.97	1.30	\$ 3,499,542.53	\$ 3,436,876.04	\$ 60,666.49	1.76
NET INCOME	\$ 892,832.83	\$ 47,875.57	\$ 544,957.28	-	\$ 4,402,654.31	\$ 3,257,774.33	\$ 1,144,879.98	-

NOTE "A"

For comparison with estimates filed as Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Docket No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:

Operating Expense-1937 Rehabil. Program - N. of W. & S.
 - N. of S.
 Amortization of Discount on W.P.R.R.Co. First Mortgage Bonds
 Available for Interest - Adjusted

MONTH PERIOD

1937	1936	1937	1936
\$ 10,803.55	\$ 2,439.51	\$ 1,105,804.75	\$ 1,056,151.00
17,348.46	11,025.60	731,990.40	527,375.98
11,263.44	11,283.44	136,401.28	136,401.28
353,814.38	286,398.65	1,069,784.65	1,002,038.06

NOTE - Italics denote red.

Accounting Department
 San Francisco, California
 February 16, 1938

1703

THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO NORTHERN RAILWAY
TIDEWATER SOUTHERN RAILWAY COMPANY
DEEP CREEK RAILROAD COMPANY

F. D. 10913
Exhibit #14

OPERATING RESULTS - COMBINED
(All Inter-Company Items Eliminated)

Item or Account	Month of January		
	1938	1937	Increase or Decrease
Average Mileage of Road Operated	1,591.09	1,591.09	-
OPERATING REVENUES			
Freight	990,363.19	8,152,536.97	\$ 382,173.78 20.93
Passenger	52,047.86	55,454.76	\$ 3,406.90 6.14
Mail	4,315.86	4,430.64	\$ 114.98 5.80
Express	2,721.59	4,345.00	\$ 1,623.81 37.14
Dining Car, Hotel & Restaurant	4,453.89	6,201.26	\$ 1,754.89 28.26
Miscellaneous	16,948.85	18,205.90	\$ 1,257.05 6.90
Total Railway Operating Revenues	\$ 1,070,860.64	\$ 1,341,181.65	\$ 270,321.01 20.18
OPERATING EXPENSES			
W. of W. & S.-Ordinary and Budget	\$ 199,437.38	\$ 150,781.74	\$ 48,655.64 32.27
W. of W. & S.-Rehabilitation Program (W.P.R.R.Co)-Note "A"	6,982.33	6,930.03	\$ 52.30
Total W. of W. & S.	206,899.71	147,861.71	\$ 59,838.00 40.98
W. of E.-Ordinary and Budget	290,042.35	226,136.53	\$ 65,905.82 29.14
W. of E.-Rehabilitation Program (W.P.R.R.Co)-Note "A"	3,588.48	50,105.77	\$ 46,532.29 92.88
Total W. of E.	298,610.83	276,240.30	\$ 22,370.53 7.01
Power	12,814.16	13,487.90	\$ 873.83 6.48
Traffic	63,113.83	61,657.41	\$ 1,456.42 21.36
Transportation - Rail Line	549,741.99	584,272.59	\$ 41,530.67 7.11
Miscellaneous Operations	6,149.76	6,689.33	\$ 539.57 8.21
General	65,807.97	56,192.09	\$ 9,414.88 16.78
Transportation for Investment Credit	12,561.95	912.17	\$ 11,649.78
Total Railway Operating Expenses	\$ 1,180,976.93	\$ 1,143,490.25	\$ 37,486.68 3.26
NET REVENUE FROM RAILWAY OPERATIONS			
Excise and Use Tax Accruals-Ordinary and Budget	\$ 43,242.73	\$ 37,016.08	\$ 6,227.65 16.82
Excise and Use Tax Accruals-Rehabil. Prog.(W.P.R.R.Co)	600.05	817.85	\$ 217.80 34.61
Railway Tax Accruals - All Other	61,701.53	61,425.10	\$ 276.43 .45
Railway Operating Income	\$ 215,639.88	\$ 16,435.59	\$ 314,095.47
Hire of Equipment - Net Debit	\$ 80,793.97	\$ 84,564.47	\$ 3,770.50 4.46
Joint Facility Rents - Net Credit	27,176.47	2,297.52	\$ 24,878.95
Net Railway Operating Income	\$ 317,830.32	\$ 16,166.64	\$ 333,798.96
NON-OPERATING INCOME			
Repayment of Property	\$ 35,034.66	\$ 37,068.18	\$ 2,033.17 5.46
Interest Accruals	2,787.49	2,933.57	\$ 146.09 5.66
Miscellaneous	255.62	163.00	\$ 92.62 56.94
Total Non-Operating Income	\$ 38,077.00	\$ 40,164.70	\$ 2,096.74 5.22
GROSS INCOME			
	\$ 279,572.30	\$ 56,323.34	\$ 335,895.70
MISCELLANEOUS DEDUCTIONS			
Miscellaneous Bents	\$ 2,628.22	\$ 2,683.26	\$ 55.04 .04
Miscellaneous Tax Accruals	4,691.73	4,180.55	\$ 511.16 12.23
Amortization of Discount - Note "A"	14,815.65	14,986.21	\$ 150.56 1.01
Miscellaneous	5,182.72	4,857.32	\$ 325.40 10.01
Total Miscellaneous Deductions	\$ 27,324.32	\$ 26,487.37	\$ 836.95 3.16
AVAILABLE FOR INTEREST - Note "A"	\$ 306,896.68	\$ 29,135.97	\$ 336,732.65
Interest on Funded Debt	\$ 273,015.19	\$ 274,483.33	\$ 1,468.14 .52
Interest on Unfunded Debt	16,857.95	20,423.23	\$ 3,565.27 17.48
Total Interest Deductions	\$ 290,873.15	\$ 294,906.56	\$ 5,033.41 1.71
NET INCOME	\$ 596,789.83	\$ 365,070.58	\$ 331,699.24

NOTE "A"		MONTH	1938	1937
For comparison with estimates filed as Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Docket No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:				
	Operating Expense - Rehabil. Program - E. of E. & S.	\$ 6,262.33	\$ 6,920.0	
	" " " " " " " " " " - E. of E.	3,568.48	50,100.7	
	Amortisation of Discount on W.F.R.R.Co. First Mortgage Bonds Available for Interest - Adjusted	11,283.44	11,285.1	
		285,782.43	84,303.1	

For comparison with estimates filed as Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Docket No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:

NOTE - Italics denote pad.
Accounting Department
San Francisco, California

March 12, 193

1704

SACRAMENTO NORTHERN RAILWAY
 TURNER-SOUTHERN RAILWAY COMPANY
 DEEP CREEK RAILROAD COMPANY
 OPERATING RESULTS - COMBINED
 (All Inter-Company Items Eliminated)

TYPE OF ACCOUNT	MONTH OF FEBRUARY				PERIOD JANUARY 1 to FEBRUARY 28			
			INCREASE OR DECREASE				INCREASE OR DECREASE	
	1936	1937	AMOUNT	PER CENT	1936	1937	AMOUNT	PER CENT
AVERAGE MILEAGE OF ROAD OPERATED	1,591.09	1,591.09	-	-	1,591.09	1,591.09	-	-
OPERATING REVENUES								
Freight	\$ 745,944.41	\$ 1,294,997.95	\$ 549,053.54	72.31	\$ 1,724,307.60	\$ 2,459,534.98	\$ 735,227.38	38.38
Passenger	41,128.55	43,748.54	2,620.39	6.37	55,100.79	69,201.00	\$ 6,020.21	8.07
Mail	4,133.34	4,384.97	151.63	4.43	8,449.00	8,755.81	306.81	3.50
Express	5,961.94	6,167.81	185.87	32.60	6,205.33	10,400.81	\$ 3,895.48	47.22
Dining-Car, Hotel & Restaurant	4,514.51	4,671.88	157.37	3.37	8,966.00	10,880.04	1,912.04	17.57
Miscellaneous	14,184.79	15,085.94	1,901.15	9.70	31,115.84	35,991.84	3,776.00	8.30
Total Railway Operating Revenues	\$ 811,751.72	\$ 1,293,974.57	\$ 482,223.85	36.78	\$ 1,628,612.36	\$ 2,454,756.22	\$ 742,143.86	38.38
OPERATING EXPENSES								
H. of W. & S.-Ordinary and Budget	\$ 250,587.01	\$ 164,971.49	\$ 35,616.52	19.14	\$ 410,904.39	\$ 335,755.23	\$ 84,051.16	25.03
H. of W. & S.-Rehabil. Prog. (W.P.A.R.C.) Note "A"	3,481.07	1,084.12	2,406.95	229.91	9,743.40	5,655.91	15,639.31	-
Total H. of W. & S.	\$ 253,068.08	\$ 165,905.61	\$ 37,602.47	20.35	\$ 420,647.79	\$ 332,757.22	\$ 92,690.47	20.00
H. of E.-Ordinary and Budget	235,193.06	220,954.14	12,230.92	5.54	328,325.43	447,050.67	78,144.76	17.48
H. of E.-Rehabil. Prog. (W.P.A.R.C.) Note "A"	4,044.90	62,894.73	58,849.83	93.37	7,613.38	112,988.50	105,385.12	93.26
Total H. of E.	\$ 237,237.96	\$ 283,846.87	\$ 46,810.92	16.42	\$ 335,940.81	\$ 560,038.17	\$ 27,240.36	4.86
Power	11,065.10	12,170.54	105.44	4.15	24,279.86	28,258.83	4,179.97	5.38
Traffic	59,097.95	58,274.38	865.62	1.41	122,311.78	119,331.73	8,280.05	1.90
Transportation - Rail-Line	812,708.91	582,037.15	70,318.74	12.00	1,058,450.85	1,167,800.74	111,349.81	9.59
Miscellaneous Operations	7,687.79	7,484.16	346.63	4.68	15,979.55	16,173.49	193.94	1.20
General	74,555.08	58,512.53	16,040.55	34.15	140,151.06	111,785.82	28,396.43	25.41
Transportation for Investment Credit	2,211.78	677.00	1,533.78	226.36	14,773.88	14,500.07	13,185.81	-
Total Railway Operating Expenses	\$ 1,124,789.16	\$ 1,165,895.96	\$ 40,906.82	3.14	\$ 2,316,705.37	\$ 2,389,185.53	\$ 33,480.14	1.01
NET REVENUE FROM RAILWAY OPERATIONS	\$ 312,977.44	\$ 77,870.89	\$ 410,856.73	-	\$ 220,093.03	\$ 206,570.89	\$ 718,662.72	-
Excise and Use Tax Accruals-Ordinary and Budget	\$ 42,703.16	\$ 36,449.70	\$ 6,343.37	17.40	\$ 86,156.89	\$ 73,464.87	\$ 12,571.08	17.11
Excise and Use Tax Accruals-Rehabil. Prog. (W.P.A.R.C.)	301.86	583.88	282.02	55.89	901.52	1,700.91	799.39	47.01
Railway Tax Accruals - All Other	\$ 55,040.93	\$ 58,380.39	2,739.36	4.88	117,549.46	120,005.39	2,456.93	2.05
Railway Operating Income	\$ 411,913.81	\$ 1,906.93	\$ 413,870.74	-	\$ 227,572.89	\$ 100,401.52	\$ 727,974.31	-
Rire of Equipment - Net Debit	\$ 54,15.70	\$ 66,911.40	\$ 12,755.67	19.11	134,919.76	\$ 151,475.87	\$ 16,556.11	10.83
Joint Facility Rents - Net Credit	6,119.07	6,768.54	1,658.53	18.51	13,157.40	9,064.06	32,221.46	-
Net Railway Operating Income	\$ 408,019.53	\$ 58,178.53	\$ 399,840.60	-	\$ 775,649.85	\$ 42,016.38	\$ 738,639.55	-
NON-OPERATING INCOME								
Rental of Property	\$ 27,253.31	\$ 35,708.48	\$ 5,453.17	16.87	\$ 68,287.97	\$ 59,764.85	\$ 7,476.58	10.72
Interest Accruals	1,064.46	6,177.23	4,302.77	69.49	4,661.94	9,110.80	4,458.86	46.94
Miscellaneous	18.00	3.00	15.00	-	273.82	168.00	107.00	64.96
Total Non-Operating Income	\$ 29,185.77	\$ 38,888.68	\$ 9,700.88	35.04	\$ 67,213.75	\$ 79,041.55	\$ 11,827.82	14.98
GROSS INCOME	\$ 440,853.76	\$ 19,292.70	\$ 409,571.46	-	\$ 708,436.17	\$ 37,051.06	\$ 745,487.18	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rents	\$ 2,652.46	\$ 2,441.78	\$ 210.70	8.63	\$ 5,345.70	\$ 5,198.07	\$ 250.63	4.30
Miscellaneous Tax Accruals	4,760.29	4,180.65	579.74	13.87	9,455.06	8,381.10	1,090.93	12.05
Amortization of Discount - Note "A"	14,785.91	18,823.57	157.66	1.06	29,601.56	39,905.78	808.23	1.03
Miscellaneous	8,875.41	5,316.98	588.49	10.50	10,999.13	9,976.84	1,024.89	10.28
Total Miscellaneous Deductions	\$ 28,274.09	\$ 26,928.00	\$ 1,101.37	4.43	\$ 55,380.41	\$ 53,370.19	\$ 2,028.22	3.80
AVAILABLE FOR INTEREST - Note "A"	\$ 456,837.85	\$ 46,175.20	\$ 410,762.73	-	\$ 763,834.53	\$ 16,339.13	\$ 747,493.40	-
Interest on Funded Debt	\$ 271,000.34	\$ 272,846.61	\$ 1,846.27	.68	\$ 547,350.73	\$ 547,350.94	\$ 3,314.21	.01
Interest on Unfunded Debt	16,512.51	17,612.00	1,099.49	6.21	33,370.47	38,036.83	4,664.76	12.36
Total Interest Deductions	\$ 287,513.05	\$ 290,468.61	\$ 2,945.56	1.01	\$ 577,386.20	\$ 585,366.17	\$ 7,978.97	1.36
NET INCOME	\$ 744,450.90	\$ 336,633.71	\$ 407,817.19	-	\$ 1,341,920.73	\$ 601,704.30	\$ 739,516.43	-

NOTE "A"	MONTH				PERIOD			
	1936		1937		1936		1937	
	1936	1937	1936	1937	1936	1937	1936	1937
Operating Expense - Rehabil. Program - H. of W. & S.	\$ 3,481.07	\$ 1,024.12	\$ 9,743.40	\$ 8,895.81				
H. of E.	4,044.90	\$ 8,894.73	7,613.88	112,996.50				
Amortization of Discount on W.P.A.R.C. First Mortgage Bonds	11,263.44	11,263.44	22,566.88	22,566.88				
Available for Interest - Adjusted	430,726.44	\$ 39,027.19	\$ 733,910.87	\$ 113,330.34				

NOTE - Italicized denotes red.

Accounting Department
San Francisco, California

APRIL 7, 1938

1705

THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO NORTHERN RAILWAY
TIMBACHE SOUTHERN RAILWAY COMPANY
SHREVE CREEK RAILROAD COMPANY

OPERATING RESULTS - CONTINUED
(All Inter-Company Items Eliminated)

ITEM OR ACCOUNT	MARCH OF 1936				PERIOD JANUARY 1 TO MARCH 31			
			INCREASE OR DECREASE				INCREASE OR DECREASE	
	1936	1937	AMOUNT	PER CENT	1936	1937	AMOUNT	PER CENT
AVERAGE MILEAGE OF ROAD OPERATED	1,591.06	1,591.06	-	-	1,591.06	1,591.06	-	-
OPERATING REVENUE								
Freight	3 910,507.21	3 1,255,829.43	3 345,012.12	38.30	3 2,514,824.91	3 3,005,134.36	3 490,310.45	38.42
Passenger	35,726.45	58,000.00	35,273.55	38.32	105,310.24	105,000.00	38,084.39	38.41
Mail	4,125.16	4,384.18	141.02	3.51	18,672.14	15,019.79	457.63	3.44
Express	6,978.48	17,651.76	9,673.28	43.47	16,571.79	30,434.77	13,872.98	43.03
Dining Car, Hotel & Restaurant	4,308.59	5,457.19	1,147.60	38.64	15,283.59	16,357.25	2,073.66	18.38
Miscellaneous	18,197.77	19,691.18	1,493.41	8.51	49,311.41	53,785.08	4,473.67	8.31
Total Railway Operating Revenues	8 963,010.74	8 1,341,666.77	8 388,656.03	38.73	8 2,825,823.10	8 3,306,428.99	8 480,790.89	38.78
OPERATING EXPENSES								
1. of W. & S.-Ordinary and Budget	3 220,307.36	3 211,056.71	3 17,330.65	8.21	3 646,191.78	3 646,809.94	3 61,621.84	18.54
2. of W. & S.-Rehabil. Prog. (W.P.R.R.Co.) Note "A"	3 144,964.07	3 30,542.57	3 114,612.50	377.73	3 254,696.27	3 24,446.56	3 130,281.81	538.50
Total W. & S.	373,271.43	341,599.28	3 151,940.70	54.06	3 892,886.05	3 71,266.60	3 231,533.43	40.55
3. of W. & S.-Ordinary and Budget	3 681,481.97	3 236,747.36	3 45,734.61	19.40	3 806,717.40	3 600,636.05	3 122,079.37	18.14
4. of W.-Rehabil. Prog. (W.P.R.R.Co.) Note "A"	3 780.44	3 66,538.80	3 59,759.76	86.08	3 11,303.82	3 209,524.70	3 198,140.88	94.58
Total W. & S.	388,860.41	336,260.56	3 47,021.15	16.18	3 819,111.28	3 696,278.73	3 122,261.51	8.32
Power	11,728.06	13,728.72	3,000.66	14.94	3 26,000.31	3 39,441.25	3 13,441.94	8.72
Traffic	57,299.98	51,426.18	3 4,122.20	8.71	3 179,811.70	3 181,353.05	3 1,542.15	1.02
Transportation - Rail Line	553,167.36	508,387.00	3 35,170.82	6.51	3 1,606,606.19	3 1,759,627.62	3 151,019.43	8.58
Miscellaneous Operations	3,041.63	8,102.05	3 560.78	11.59	3 25,021.18	3 24,276.34	3 744.84	3.07
General	36,618.97	36,606.86	3 7,018.41	18.61	3 808,779.35	3 167,371.45	3 36,407.04	81.18
Transportation for Investment Credit	3,350.37	10,277.21	3 7,436.84	73.37	3 17,624.08	3 11,867.80	3 8,756.77	48.51
Total Railway Operating Expenses	3 1,349,594.53	3 1,294,647.06	3 54,947.47	4.24	3 3,658,200.00	3 3,623,838.59	3 31,467.33	.87
NET REVENUE FROM RAILWAY OPERATIONS	8 386,689.79	8 47,019.71	8 419,608.50	-	8 789,678.62	8 342,890.40	8 1,132,367.20	-1
Excise and Use Tax Accruals - Ordinary and Budget	3 47,940.00	3 58,664.02	3 7,713.94	13.88	3 133,978.97	3 129,118.89	3 4,857.08	3.76
Excise and Use Tax-Accruals - Rehabil. Prog. (W.P.R.R.Co.)	3 144.42	3 1,484.68	3 1,340.26	90.27	3 1,045.73	3 1,038.59	3 12,129.85	87.17
Railway Tax Accruals - All Other	3 57,377.80	3 58,608.01	3 2,237.81	2.10	3 174,018.66	3 178,608.40	3 3,588.74	2.07
Railway Operating Income	3 473,045.49	3 69,724.00	3 403,321.49	-	3 1,039,518.18	3 31,677.32	3 1,171,388.70	-
Rip-off Equipment - Net Debit	3 64,494.35	3 87,016.51	3 23,522.16	36.38	3 199,414.11	3 236,294.36	3 35,880.27	18.67
Joint Facility Rents - Net Credit	3 9,470.37	3 14,118.06	3 4,638.68	32.87	3 3,679.03	3 22,176.11	3 28,505.14	-
Net Railway Operating Income	3 377,061.47	3 142,430.44	3 284,631.01	-	3 1,302,711.32	3 184,440.75	3 1,118,270.57	-
NON-OPERATING INCOME								
Rental of Property	3 31,777.06	3 36,801.93	3 7,104.87	18.27	3 94,066.03	3 108,636.48	3 14,561.45	13.42
Interest Accruals	3 1,058.75	3 1,150.36	3 1,477.63	47.20	3 6,304.69	3 18,241.18	3 936.49	48.50
Miscellaneous	3 22.00	3 18.00	3 10.55	22.00	3 298.88	3 178.00	3 117.02	50.19
Total Non-Operating Income	3 35,451.81	3 42,084.31	3 8,572.50	20.40	3 100,666.54	3 121,066.66	3 20,400.12	18.85
GROSS INCOME	3 493,609.66	3 100,406.15	3 389,203.51	-	3 1,302,048.73	3 63,375.09	3 1,139,370.69	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rents	3 2,454.40	3 2,652.59	3 198.19	7.47	3 7,800.10	3 7,777.66	3 22.44	.29
Miscellaneous Tax Accruals	3 4,580.95	3 4,109.40	3 481.55	10.99	3 14,012.97	3 18,470.50	3 1,568.47	18.37
Amortization of Discount - Note "A"	3 14,912.04	3 16,921.70	3 93.24	1.08	3 44,514.50	3 44,751.48	3 216.98	.49
• Miscellaneous	3 6,188.66	3 6,636.40	3 457.74	7.77	3 17,167.79	3 16,810.64	3 367.15	2.18
Total Miscellaneous Deductions	3 28,096.95	3 26,420.09	3 323.14	2.14	3 82,495.36	3 81,730.26	3 1,765.08	2.06
AVAILABLE FOR INTEREST - NOTE "A"	3 521,708.81	3 120,824.24	3 392,880.57	-	3 1,285,541.74	3 145,185.37	3 1,140,378.77	-
Interest on Funded Debt	3 270,970.94	3 272,720.11	3 1,742.17	.64	3 814,900.67	3 800,060.06	3 1,858.38	.02
Interest on Unfunded Debt	3 17,814.31	3 18,005.10	3 190.79	4.39	3 50,584.78	3 56,040.33	3 4,455.55	8.74
Total Interest Deductions	3 288,184.25	3 290,727.21	3 2,832.96	4.87	3 865,580.45	3 876,080.36	3 10,511.93	1.20
NET INCOME	3 909,900.66	3 419,553.45	3 280,347.41	-	3 2,151,121.59	3 1,021,287.75	3 1,129,883.84	-

NOTE "A"	MARCH OF 1936				PERIOD			
	1936	1937	1936	1937	1936	1937	1936	1937
Operating Expenses - Rehabil. Program - W. & S.	3 144,964.87	3 30,348.57	3 104,690.27	3 24,446.66				
Interest on W. & S.	3 780.44	3 6,536.20	3 11,393.82	3 209,534.70				
Amortization of Discount on W.P.R.R.Co. First Mortgage Bonds	3 1,215.44	3 11,295.44	3 33,050.32	3 33,050.32				
Available for Interest - Adjusted	3 61,687.88	3 9,338.97	3 1,038,598.73	3 122,666.31				

Note - Juries dissent Fed.

Accounting Department
San Francisco, California

May 5, 1938

THE WESTERN PACIFIC RAILROAD COMPANY
 SACRAMENTO NORTHERN RAILWAY
 TIMBERRA SOUTHERN RAILWAY COMPANY
 INDIAN CHEM RAILROAD COMPANY
 OPERATING REVENUES - COMBINED
 (All Inter-Company Items Eliminated)

ITEM OR ACCOUNT	MONTH OF APRIL				PERIOD JANUARY 1 to APRIL 30			
	1936	1937	Increase or Decrease		1936	1937	Increase or Decrease	
			Amount	Per Cent			Amount	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	1,591.09	1,591.09	-	-	1,591.09	1,591.09	-	-
OPERATING REVENUES								
Freight	\$ 962,345.80	\$ 1,227,661.55	\$ 265,615.95	21.62	\$ 3,607,240.51	\$ 4,923,066.90	\$ 1,315,845.39	26.73
Passenger	54,233.55	74,381.15	20,147.60	37.35	185,152.55	253,585.05	68,437.15	27.25
Mail	5,745.21	4,297.98	304.77	7.09	16,565.37	27,317.77	752.40	4.34
Express	18,680.57	18,906.00	185.13	.88	32,922.65	48,950.77	15,728.11	29.88
Dining Car, Hotel & Restaurant	4,840.71	5,244.00	403.28	7.69	18,194.30	21,581.25	3,386.93	17.69
Miscellaneous	18,838.08	17,811.34	1,020.66	9.76	68,203.43	70,904.36	2,790.93	3.93
Total Railway Operating Revenues	\$ 1,089,956.00	\$ 1,345,000.05	\$ 255,044.05	23.20	\$ 3,926,579.10	\$ 5,311,515.05	\$ 1,385,935.95	26.09
OPERATING EXPENSES								
W. of W. & S.-Ordinary and Budget	\$ 230,984.00	\$ 278,512.75	\$ 47,528.75	17.09	\$ 870,176.45	\$ 838,244.74	\$ 46,931.72	5.94
W. of W. & S.-Rehabil. Prog. (W.P.R.R.Co.) Note "A"	274,463.57	280,003.24	46,540.53	16.38	429,161.54	425,627.00	180,533.96	76.72
Total W. of W. & S.	505,448.57	568,516.00	1,187.77	.23	1,298,336.99	1,277,872.62	230,465.66	21.24
W. of E.-Ordinary and Budget	\$ 202,426.25	\$ 263,355.29	\$ 60,929.94	15.54	1,029,143.75	946,193.32	18,960.43	8.77
W. of E.-Rehabil. Prog. (W.P.R.R.Co.) Note "A"	1,792.83	78,016.90	74,234.07	97.84	13,186.65	280,561.60	272,364.95	95.38
Total W. of E.	224,219.18	339,372.19	115,153.01	33.93	1,042,330.40	1,251,744.92	189,414.52	15.38
Power	12,614.55	12,694.05	80.55	.65	48,616.89	88,036.20	3,418.39	6.57
Traffic	68,380.46	80,326.29	12,036.17	5.37	261,872.15	241,679.14	195.02	.08
Transportation - Rail Line	560,196.10	578,966.98	12,771.88	2.22	2,186,803.29	2,338,593.90	163,780.61	7.02
Miscellaneous Operations	7,484.47	7,596.02	108.35	1.43	32,505.65	31,869.16	656.49	2.00
General	68,982.48	66,764.98	7,059.15	15.06	985,702.74	828,655.74	15,067.00	19.34
Transportation for Investment Credit	7,698.42	10,304.50	2,701.08	42.87	25,316.47	25,801.58	54.89	.22
Total Railway Operating Expenses	\$ 1,427,553.04	\$ 1,541,336.55	\$ 113,783.55	7.38	\$ 6,028,252.95	\$ 8,160,169.18	\$ 21,318.22	1.59
NET REVENUE FROM RAILWAY OPERATIONS	\$ 367,397.94	\$ 198,344.53	\$ 171,253.51	-	\$ 1,157,273.85	\$ 146,345.87	\$ 1,303,619.73	-
Excise and Use Tax Accruals - Ordinary and Budget	\$ 46,983.00	\$ 46,746.98	\$ 444.93	.99	180,869.05	175,967.41	4,900.36	2.50
Excise and Use Tax Accruals - Rehabil. Prog. (W.P.R.R.Co.)	1,065.54	1,026.81	1,102.37	51.71	3,009.27	7,261.40	4,242.13	58.50
Railway Tax Accruals - All Other	58,819.06	50,666.14	2,125.72	4.19	287,739.52	289,304.64	1,585.02	.08
Railway Operating Income	\$ 488,004.13	\$ 297,758.00	\$ 170,209.13	-	\$ 1,858,292.31	\$ 268,077.48	\$ 1,202,204.83	-
Hire of Equipment - Net Debit	\$ 58,857.05	\$ 81,616.37	\$ 22,759.32	37.86	\$ 260,271.16	\$ 320,906.75	\$ 62,637.59	19.82
Joint Facility Rents - Net Credit	11,508.79	13,438.01	60.70	.61	7,829.75	34,615.12	36,795.36	77.38
Net Railway Operating Income	\$ 518,048.39	\$ 387,830.94	\$ 130,082.03	-	\$ 1,681,723.71	\$ 553,371.11	\$ 1,266,352.60	-
NON-OPERATING INCOME								
Rental of Property	\$ 32,745.90	\$ 34,358.87	\$ 3,614.97	9.94	\$ 126,020.93	\$ 145,006.75	\$ 18,186.42	12.53
Interest Accruals	1,840.04	3,330.31	3,690.27	30.75	7,944.75	10,571.48	7,629.74	48.99
Miscellaneous	6.00	1.00	5.00	-	301.62	179.00	122.62	66.61
Total Non-Operating Income	\$ 34,380.94	\$ 38,090.18	\$ 3,300.24	13.35	\$ 136,065.48	\$ 160,755.84	\$ 25,700.38	15.99
GROSS INCOME	\$ 481,622.45	\$ 335,340.18	\$ 153,362.27	-	\$ 1,683,668.23	\$ 391,615.37	\$ 1,266,052.98	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rent	\$ 2,754.17	\$ 2,629.42	\$ 114.75	4.35	\$ 10,554.87	\$ 10,417.09	\$ 137.19	1.32
Miscellaneous Tax Accruals	4,582.53	4,131.83	450.90	10.91	18,596.50	16,602.13	1,995.37	12.01
Amortization of Discount - Note "A"	1,555.58	14,821.70	13,266.12	89.50	48,070.30	59,553.18	11,483.10	22.84
Miscellaneous	6,388.53	5,795.04	792.49	13.69	23,756.32	23,606.08	1,150.64	5.09
Total Miscellaneous Deductions	\$ 16,400.81	\$ 27,327.79	\$ 11,908.98	42.48	\$ 98,976.17	\$ 109,178.07	\$ 10,201.80	9.74
AVAILABLE FOR INTEREST - Note "A"	\$ 497,103.26	\$ 355,627.97	\$ 141,475.20	-	\$ 1,782,644.40	\$ 500,793.34	\$ 1,281,851.08	-
Interest on Funded Debt	\$ 141,693.83	\$ 278,176.71	\$ 130,484.88	47.94	\$ 956,869.50	\$ 1,092,230.76	\$ 135,341.26	12.41
Interest on Unfunded Debt	169,500.07	16,666.20	150,536.70	-	219,789.65	74,706.61	145,085.24	194.20
Total Interest Deductions	\$ 310,993.90	\$ 290,844.99	\$ 80,053.91	8.90	\$ 1,176,479.36	\$ 1,168,237.37	\$ 9,841.98	.02
NET INCOME	\$ 106,002.31	\$ 948,472.96	\$ 161,529.20	-	\$ 2,959,123.75	\$ 1,667,730.71	\$ 1,291,393.04	-

NOTE "A"	MONTH				PERIOD			
	1936	1937	1936	1937	1936	1937	1936	1937
For comparison with estimates filed as Exhibit 29 and also the record in similar form set forth by Exhibit 45 Finance Docket No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases:								
Operating Expense - Rehabil. Program - W. of W. & S.	\$ 274,463.57	\$ 288,003.24	\$ 429,161.54	\$ 345,627.88				
W. of E.	1,792.83	78,016.90	13,186.65	20,551.60				
Amortization of Discount on W.P.R.R.Co. First Mortgage Bonds	11,983.44	11,983.44	46,133.76	46,133.76				
Available for Interest - Adjusted	209,363.42	40,324.39	1,295,182.19	78,519.90				

Note - Juries decide red.

Accounting Department
San Francisco, California

June 8, 1938

1707

THE WESTERN PACIFIC RAILROAD COMPANY
BACONVILLE-NORTHERN RAILWAY
TIDWATER-SOUTHERN RAILWAY COMPANY
ARMY CREEK RAILROAD COMPANY

OPERATING RESULTS - COMBINED
(All Inter-Company Items Eliminated)

ITEM ON ACCOUNT	MONTH OF MAY				PERIOD JANUARY 1 to MAY 31			
			INCREASE or DECREASE				INCREASE or DECREASE	
	1936	1937	AMOUNT	Per Cent	1936	1937	AMOUNT	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	1,591.00	1,591.00	-	-	1,591.00	1,591.00	-	-
OPERATING REVENUES								
Freight	\$ 1,171,186.83	\$ 1,398,030.56	\$ 226,851.63	16.23	\$ 4,770,427.44	\$ 5,201,124.46	\$ 1,432,697.02	26.41
Passenger	58,152.21	67,212.76	13,060.55	22.41	356,305.04	299,707.76	64,492.72	21.51
Mail	4,239.68	4,307.74	77.92	1.81	20,798.19	21,625.51	830.32	3.84
Express	11,227.03	10,578.85	948.18	-8.17	45,649.69	56,329.62	12,679.93	22.37
Dining Car, Hotel & Restaurant	5,168.44	6,676.86	1,508.42	32.67	23,385.74	28,257.49	4,900.75	17.34
Miscellaneous	15,975.81	16,616.99	641.18	3.86	84,179.24	87,611.36	3,432.11	3.92
Total Railway Operating Revenues	\$ 1,859,954.24	\$ 1,803,231.14	\$ 243,296.90	16.18	\$ 5,185,513.34	\$ 6,014,746.19	\$ 1,629,232.85	23.91
OPERATING EXPENSES								
W. of W. & B. - Ordinary and Budget	\$ 164,906.90	\$ 253,141.74	\$ 88,234.84	23.00	\$ 1,074,086.56	\$ 1,065,386.46	\$ 11,300.12	1.04
W. of W. & B. - Rehabilitation Program (W.P.R.R.C.) Note "A"	348,352.76	245,781.15	100,601.61	40.94	775,484.60	491,349.03	284,135.57	57.83
Total W. of W. & B.	513,252.66	490,922.89	48,669.77	9.60	1,849,570.96	1,576,736.51	272,836.45	17.30
W. of E. - Ordinary and Budget	187,318.02	255,930.89	68,612.87	16.81	1,818,461.77	1,808,123.91	14,337.86	1.19
W. of E. - Rehabilitation Program (W.P.R.R.C.) Note "A"	88,586.04	78,370.04	43,784.00	50.50	41,772.69	357,921.64	316,148.95	88.33
Total W. of E.	215,904.06	188,300.93	112,396.57	34.24	1,859,234.46	1,860,045.56	301,811.02	19.35
Power	11,827.87	12,410.53	572.66	4.82	60,454.56	64,445.81	3,991.25	6.19
Traffic	61,782.43	64,167.36	2,405.93	3.75	303,634.59	305,649.49	2,015.90	0.72
Transportation - Mail Lines	884,956.02	598,362.26	52,467.26	12.28	2,653,790.31	2,931,056.18	277,267.87	9.09
Miscellaneous Operations	7,506.87	8,889.62	1,382.75	15.55	40,012.68	40,788.76	746.18	1.83
General	68,871.22	110,782.51	47,911.29	43.25	368,573.90	353,418.25	4,844.29	1.43
Transportation for Investment Credit	1,404.00	7,943.89	6,539.89	62.31	26,721.39	33,205.47	6,484.08	19.83
Total Railway Operating expenses	\$ 1,424,705.11	\$ 1,613,935.92	\$ 189,230.81	17.72	\$ 6,507,586.07	\$ 6,779,103.10	\$ 271,516.03	4.01
NET REVENUE FROM RAILWAY OPERATIONS								
Railway and Use-Tax Accruals - Ordinary and Budget	\$ 184,770.87	\$ 170,702.78	\$ 34,068.09	-	\$ 1,322,044.73	\$ 36,843.00	\$ 1,357,887.82	-
Railway and Use-Tax Accruals - Rehabilitation Program (W.P.R.R.C.)	30,714.49	43,186.36	12,472.87	3.64	219,974.15	219,056.79	918.36	.42
Railway Tax Accruals - All Other	4,921.81	4,304.56	527.23	-12.00	7,931.08	11,645.96	3,714.90	31.90
Total Railway Tax Accruals	35,710.11	50,694.00	55,690.13	-	285,486.53	231,385.52	62,135.11	22.54
Railway Operating Income	\$ 265,126.38	\$ 180,208.72	\$ 104,919.56	-	\$ 1,033,408.39	\$ 426,384.20	\$ 1,407,024.39	-
Hire of Equipment - Net Debit	80,195.43	106,316.18	26,120.75	41.17	310,466.59	423,284.93	104,758.34	24.73
Joint Facility Rent - Net Credit	16,438.83	25,915.66	9,479.83	36.58	24,260.59	60,533.78	36,253.19	59.91
Net Railway Operating Income	\$ 308,882.89	\$ 226,704.24	\$ 72,178.64	-	\$ 2,127,806.59	\$ 789,079.35	\$ 1,338,531.24	-
NON-OPERATING INCOME								
Rental of Property	\$ 23,076.49	\$ 34,536.07	\$ 11,459.58	33.18	\$ 149,885.42	\$ 170,541.42	\$ 20,656.00	16.53
Interest Accruals	2,715.33	3,067.95	352.62	11.49	10,680.06	10,639.44	7,979.39	42.81
Miscellaneous	22.00	20.00	20.00	-	328.92	181.00	142.82	70.91
Total Non-Operating Income	\$ 25,813.82	\$ 37,606.08	\$ 11,792.20	31.36	\$ 180,869.30	\$ 190,361.86	\$ 37,482.56	16.90
OTHER INCOME								
\$ 283,069.06	\$ 199,098.22	\$ 83,970.84	-		\$ 1,966,737.29	\$ 590,713.49	\$ 1,376,023.80	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rent	\$ 2,539.17	\$ 2,764.90	\$ 225.63	8.16	\$ 13,093.44	\$ 13,181.86	\$ 89.44	.67
Miscellaneous Tax Accruals	4,601.97	4,141.24	480.73	11.13	23,197.47	20,745.37	2,454.10	11.83
Amortization of Discount - Note "A"	11,453.40	14,821.70	3,368.52	22.72	57,923.56	74,374.00	16,951.32	22.95
Miscellaneous	7,801.03	5,809.19	1,981.84	36.51	31,357.35	26,214.87	3,142.40	11.14
Total Miscellaneous Deductions	\$ 26,196.65	\$ 27,356.93	\$ 1,441.29	4.17	\$ 126,271.82	\$ 136,516.00	\$ 11,343.16	8.31
AVAILABLE FOR INTEREST - Note "A"								
Interest on Funded Debt	\$ 309,264.71	\$ 226,435.15	\$ 82,829.56	-	\$ 2,091,909.11	\$ 727,226.49	\$ 1,364,680.62	-
Interest on Unfunded Debt	\$ 247,917.70	\$ 275,613.25	\$ 27,695.53	11.86	\$ 1,100,607.80	\$ 1,367,845.99	\$ 168,236.79	12.30
Total Interest Deductions	\$ 557,182.37	\$ 501,048.40	\$ 41,297.05	82.93	\$ 3,197,516.97	\$ 91,745.93	186,380.29	200.96
NET INCOME	\$ 911,518.78	\$ 520,087.70	\$ 91,431.08	-	\$ 3,570,642.53	\$ 2,157,818.41	\$ 1,382,824.12	-

NOTE "A"	MONTH				PERIOD			
	1936	1937	1936	1937	1936	1937	1936	1937
Operating Expense - Rehabil. Program - W. of W. & B. - W. of E.	\$ 346,302.76	\$ 245,721.15	\$ 775,484.60	\$ 491,349.03	284,135.57	367,981.64	40,417.20	176,489.38
Amortization of Discount on W.P.R.R.C. First Mortgage Bonds - Available for Interest - Adjusted	28,586.04	272,370.04	41,772.69	321,385.52	36,417.20	40,417.20	3,142.40	11.14

THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO NORTHERN RAILWAY
TIDWATER SOUTHERN RAILWAY COMPANY
HEEP CREEK RAILROAD COMPANY
OPERATING RESULTS - COMBINED
(All Inter-Company Items Eliminated)

ITEM OR ACCOUNT	MONTH OF JUNE		PERIOD JANUARY 1 to JUNE 30		PERIOD JANUARY 1 to JUNE 30			
	INCREASE OR DECREASE		INCREASE OR DECREASE		INCREASE OR DECREASE			
	1936	1937	AMOUNT	PER CENT	1936	1937	AMOUNT	PER CENT
AVERAGE KILOMAGE OF ROAD OPERATED	1,591.09	1,591.09	-	-	1,591.09	1,591.09	-	-
OPERATING REVENUES								
Freight	\$ 1,156,354.10	\$ 1,272,942.56	\$ 116,588.46	9.16	\$ 5,051,702.44	\$ 7,094,068.00	\$ 1,832,364.48	31.89
Passenger	70,700.97	80,170.70	9,469.73	11.91	500,000.00	370,000.00	70,000.00	14.37
Mail	3,451.13	4,233.58	802.12	18.95	34,226.52	25,860.76	1,632.44	6.31
Express	29,254.00	30,936.36	10,682.36	36.73	72,703.69	96,266.97	23,562.28	24.49
Dining Car, Hotel & Restaurant	9,030.49	9,294.62	264.13	3.76	38,596.16	37,828.11	3,156.95	13.73
Miscellaneous	17,169.82	17,449.86	280.04	1.63	101,044.76	106,061.25	3,716.47	3.54
Total Railway Operating Revenues	\$ 1,205,946.14	\$ 1,424,088.56	\$ 118,142.32	9.70	\$ 6,471,659.48	\$ 8,230,778.55	\$ 1,759,119.07	31.45
OPERATING EXPENSES								
W. of W. & S.-Ordinary and Budget	\$ 225,743.33	\$ 274,658.06	\$ 49,114.83	17.87	\$ 1,299,829.54	\$ 1,369,136.96	\$ 69,307.32	5.08
W. of W. & S.-Rehabilitation Program (W.P.R.R.Co.) Note "A"	253,521.79	192,854.54	70,667.25	36.65	1,039,006.59	675,311.85	363,695.14	53.86
Total W. of W. & S.	\$ 479,264.97	\$ 467,712.60	\$ 21,559.37	4.61	\$ 2,326,826.93	\$ 2,044,448.11	\$ 294,387.82	14.40
W. of E-Ordinary and Budget	\$ 177,219.89	\$ 239,777.01	\$ 62,557.12	36.09	\$ 1,393,681.86	\$ 1,441,900.98	\$ 48,219.26	3.34
W. of E-Rehabilitation Program (W.P.R.R.Co.) Note "A"	51,409.14	69,088.00	37,648.86	42.27	93,181.83	446,976.64	353,794.81	79.13
Total W. of E.	\$ 228,629.03	\$ 308,863.61	\$ 80,234.58	30.47	\$ 1,486,863.69	\$ 1,898,977.56	\$ 402,014.07	31.38
Power	\$ 10,831.83	\$ 11,968.43	\$ 1,136.60	9.83	\$ 71,386.39	\$ 76,431.24	\$ 5,146.85	6.73
Traffic	67,840.49	64,283.70	3,516.72	5.23	371,475.01	370,072.19	1,402.82	.36
Transportation - Rail Line	510,374.38	565,497.55	55,123.17	9.78	3,204,172.65	3,496,553.73	292,381.04	9.38
Miscellaneous Operations	11,675.05	11,737.21	62.16	.55	51,677.67	52,496.99	808.32	1.54
General	59,066.75	62,117.96	3,051.21	4.91	367,642.71	395,556.21	7,893.50	2.07
Transportation for Investment Credit	16,531.85	17,790.86	1,259.01	7.30	43,252.94	34,996.33	8,256.61	23.59
Total Railway Operating Expenses	\$ 1,361,132.86	\$ 1,510,318.60	\$ 149,185.74	9.88	\$ 7,868,710.98	\$ 8,289,418.70	\$ 420,707.75	3.08
NET REVENUE FROM RAILWAY OPERATIONS	\$ 75,306.74	\$ 88,387.24	\$ 11,080.50	-	\$ 1,327,281.47	\$ 80,644.15	\$ 1,346,007.32	-
Excise and Use Tax Accruals-Ordinary and Budget	\$ 40,943.37	\$ 42,682.30	\$ 1,639.03	3.88	\$ 260,917.82	\$ 961,636.18	\$ 720.68	.28
Excise and Use Tax Accruals-Rehabilitation Program (W.P.R.R.Co.)	54,449.61	53,959.89	490.28	12.44	11,380.69	15,586.87	4,205.18	26.86
Railway Tax Accruals-All Other	53,798.11	68,008.27	12,210.16	1.49	337,256.74	384,333.79	52,922.96	16.61
Railway Operating Income	\$ 173,297.83	\$ 195,817.79	\$ 22,520.96	-	\$ 2,008,806.42	\$ 812,201.89	\$ 1,394,604.43	-
Hire of Equipment-Net Debit	\$ 79,408.15	\$ 87,455.76	\$ 8,047.61	9.21	\$ 327,868.74	\$ 810,600.69	\$ 112,811.95	22.09
Joint Facility Rents-Net Credit	84,421.04	16,270.53	8,142.51	50.02	48,689.63	78,812.31	\$ 30,122.68	36.61
Net Railway Operating Income	\$ 238,378.94	\$ 286,995.07	\$ 48,616.00	-	\$ 2,385,995.53	\$ 1,046,070.37	\$ 1,309,915.16	-
NON-OPERATING INCOME								
Rental of Property	\$ 22,662.26	\$ 36,362.13	\$ 9,699.88	30.98	\$ 172,437.67	\$ 211,923.55	\$ 39,493.88	18.63
Interest accruals	1,763.86	3,697.50	1,933.64	50.47	12,443.94	22,256.94	9,793.00	44.04
Miscellaneous	1.00	9.00	7.00	87.50	384.82	189.00	135.82	71.88
Total Non-Operating Income	\$ 24,337.13	\$ 36,467.63	\$ 11,650.50	32.37	\$ 185,604.43	\$ 234,349.49	\$ 49,743.06	20.97
GROSS INCOME	\$ 264,041.87	\$ 221,067.39	\$ 16,965.56	-	\$ 2,170,779.10	\$ 814,720.89	\$ 1,359,058.22	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Rents	\$ 2,489.40	\$ 2,652.60	\$ 163.18	6.15	\$ 15,562.86	\$ 16,834.48	\$ 251.62	1.59
Miscellaneous Tax Accruals	4,596.58	4,131.64	404.94	11.25	27,794.05	24,875.01	2,919.04	11.75
Amortization of Discount - Note "A"	11,453.48	14,821.70	3,368.22	33.73	68,977.04	69,196.89	20,219.84	32.67
Miscellaneous	5,801.05	6,765.27	963.42	14.24	37,159.04	34,960.14	2,179.06	6.23
Total Miscellaneous Deductions	\$ 24,341.33	\$ 28,371.21	\$ 1,039.88	14.20	\$ 149,813.15	\$ 164,866.21	\$ 15,373.06	9.32
AVAILABLE FOR INTEREST - Note "A"	\$ 228,383.14	\$ 249,378.60	\$ 20,995.46	-	\$ 2,320,292.25	\$ 976,507.09	\$ 1,343,685.16	-
Interest on Funded Debt	\$ 261,299.57	\$ 274,074.66	\$ 32,775.09	11.98	\$ 1,440,906.77	\$ 1,641,918.65	\$ 201,017.68	12.24
Interest on Unfunded Debt	61,800.84	17,770.27	44,030.57	247.77	340,927.06	110,516.20	230,410.86	206.49
Total Interest Deductions	\$ 303,100.41	\$ 291,844.93	\$ 11,255.48	3.86	\$ 1,781,833.83	\$ 1,782,434.85	\$ 29,599.98	1.68
NET INCOME	\$ 531,483.55	\$ 341,322.53	\$ 9,739.98	-	\$ 4,102,136.08	\$ 2,739,041.94	\$ 1,373,084.14	-

NOTE "A".

For comparison with estimates filed as Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Docket No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases

Operating Expense - Rehabil. Program - W. of W. & S.
- M. of E.
Amortization of Discount on W.P.R.R.Co. First Mortgage Bonds
Available for Interest - Adjusted

	MONTH		PERIOD	
	1936	1937	1936	1937
Operating Expense - Rehabil. Program - W. of W. & S.	\$ 190,854.54	\$ 1,039,006.39	\$ 875,311.25	
- M. of E.	\$ 51,409.44	\$ 93,181.83	\$ 446,976.64	
Amortization of Discount on W.P.R.R.Co. First Mortgage Bonds	\$ 11,263.44	\$ 67,700.64	\$ 67,700.64	
Available for Interest - Adjusted	\$ 97,831.23	\$ 43,814.38	\$ 1,126,403.39	\$ 213,381.44

THE WESTERN PACIFIC RAILROAD COMPANY
SACRAMENTO NORTHERN RAILWAY
TIDWATER SOUTHERN RAILWAY COMPANY
DEEP CREEK RAILROAD COMPANY
OPERATING RESULTS - COMBINED
(All Inter-Company Items Eliminated)

ITEM OR ACCOUNT	MONTH OF JULY		PERIOD JANUARY 1 to JULY 31					
			Increase or Decrease				Increase or Decrease	
	1936	1937	Amount	Per Cent	1936	1937	Amount	Per Cent
AVERAGE MILEAGE OF ROAD OPERATED	1,591.09	1,591.09	-	-	1,591.09	1,591.09	-	-
OPERATING REVENUES								
Freight	\$ 1,211,649.16	\$ 1,294,554.85	\$ 82,905.69	6.41	\$ 7,146,432.70	\$ 8,866,702.87	\$ 1,720,270.17	19.50
Passenger	81,511.00	80,096.06	-780.16	-7.70	387,517.93	468,060.54	80,722.61	17.28
Mail	3,455.76	4,254.47	798.71	18.48	27,852.08	30,113.23	2,261.15	8.17
Express	5,021.00	6,360.46	1,339.46	26.06	77,724.89	102,626.45	24,901.76	24.26
Dining Car, Hotel & Restaurant	8,506.36	10,341.68	1,835.32	17.75	40,901.82	47,993.78	6,992.27	14.60
Miscellaneous	17,821.26	19,130.84	1,309.58	7.53	119,165.99	124,927.07	5,026.08	4.05
Total Railway Operating Revenues	\$ 1,327,736.43	\$ 1,422,814.60	\$ 95,078.17	6.88	\$ 7,790,194.71	\$ 9,651,886.96	\$ 1,862,304.04	19.28
OPERATING EXPENSES								
H. of W. & S.-Ordinary and Budget	\$ 236,760.48	\$ 270,125.13	\$ 33,365.65	12.35	\$ 1,535,599.02	\$ 1,639,259.99	\$ 102,660.97	6.26
H. of W. & S.-Rehabilitation Program (W.P.R.R.C.) Note "A"	59,728.54	104,420.84	45,692.30	79.57	1,076,734.73	869,732.09	209,002.64	24.03
Total H. of W. & S.	\$ 276,487.92	\$ 404,543.97	\$ 128,056.15	46.48	\$ 2,610,335.75	\$ 2,306,992.08	\$ 106,341.67	4.24
H. of E.-Ordinary and Budget	\$ 178,980.54	\$ 261,353.91	\$ 82,373.37	46.52	\$ 1,572,662.80	\$ 1,703,264.63	\$ 130,582.63	7.67
H. of E.-Rehabilitation Program (W.P.R.R.C.) Note "A"	62,141.00	63,959.27	1,818.19	2.84	155,322.91	510,935.91	355,613.00	69.60
Total H. of E.	\$ 241,121.52	\$ 325,313.18	\$ 84,191.66	35.88	\$ 1,727,986.11	\$ 2,141,190.74	\$ 486,205.63	21.96
Power	11,202.07	13,463.35	2,261.28	16.80	82,480.46	89,894.59	7,416.13	8.24
Traffic	62,928.55	62,066.28	-862.29	-1.30	434,403.26	432,134.45	2,265.11	.53
Transportation-Hail Line	531,210.41	584,094.81	51,884.40	7.68	3,743,383.10	4,030,648.54	337,265.44	8.26
Miscellaneous Operations	10,154.82	12,201.54	2,045.72	16.77	61,942.49	64,667.53	3,585.04	4.41
General	60,284.09	58,963.69	-1,320.40	-2.17	44,766.80	454,399.00	6,173.10	1.42
Transportation for Investment Credit	3,066.40	2,456.17	-610.23	-20.68	46,319.34	37,452.50	8,366.84	22.67
Total Railway Operating expenses	\$ 1,198,332.09	\$ 1,510,000.63	\$ 311,668.54	21.06	\$ 9,067,043.93	\$ 9,307,509.33	\$ 240,465.40	7.55
NET REVENUE FROM RAILWAY OPERATIONS	\$ 1,129,402.45	\$ 95,276.23	\$ 224,670.66	-	\$ 1,267,849.02	\$ 1,121,929.64	-	-
Excise and Use Tax Accruals-Ordinary and Budget	\$ 33,150.73	\$ 233,507.59	\$ 200,356.86	-	\$ 94,068.25	\$ 36,130.59	\$ 265,937.66	671.21
Excise and Use Tax Accruals-Rehabilitation Program (W.P.R.R.C.)	7,030.41	10,585.08	3,555.67	33.57	18,411.10	16,168.89	2,752.79	29.85
Railway Tax Accruals-All Other	57,796.65	57,046.74	-749.91	-1.43	392,062.39	341,890.53	53,171.86	16.65
Railway Operating Income	\$ 31,425.46	\$ 60,101.60	\$ 28,676.14	47.71	\$ 1,975,380.76	\$ 352,100.39	\$ 1,423,280.37	-
Hire of Equipment-Net Debit	\$ 88,199.15	\$ 102,306.96	\$ 17,107.79	18.72	\$ 483,067.89	\$ 612,987.63	\$ 129,919.74	21.19
Joint Facility Rents-Net Credit	9,302.90	1,790.69	7,433.00	416.02	\$ 57,395.53	78,593.16	20,699.66	26.34
Net Railway Operating Income	\$ 44,593.59	\$ 40,434.46	\$ 4,145.13	-	\$ 2,400,555.22	\$ 1,086,494.83	\$ 1,314,000.29	-
NON-OPERATING INCOME								
Rental of Property	\$ 22,507.92	\$ 34,337.46	\$ 12,330.54	55.39	\$ 194,945.59	\$ 246,761.01	\$ 51,815.42	21.00
Interest Accruals	2,785.17	2,388.57	300.60	16.80	15,299.11	24,625.51	9,336.40	38.18
Miscellaneous	12.00	7.00	5.00	71.43	336.92	196.00	140.82	71.65
Total Non-Operating Income	\$ 25,306.09	\$ 37,033.03	\$ 11,297.94	32.04	\$ 210,511.52	\$ 271,582.52	\$ 61,071.00	22.49
GROSS INCOME	\$ 19,264.50	\$ 3,191.43	\$ 16,073.07	-	\$ 2,190,043.60	\$ 814,912.31	\$ 1,375,131.29	-
MISCELLANEOUS DEDUCTIONS								
Miscellaneous Debits	2,519.45	2,806.10	\$ 14.33	.37	\$ 18,102.29	\$ 18,330.58	\$ 237.29	.29
Miscellaneous Tax Accruals	4,819.41	4,613.99	200.42	4.45	32,515.45	29,489.00	3,124.45	10.60
Amortization of Discount - Note "A"	11,483.40	14,621.70	3,338.28	22.72	80,430.52	104,018.29	23,587.76	22.68
Miscellaneous	4,969.60	6,594.45	1,765.76	26.38	42,087.99	41,874.59	113.30	.99
Total Miscellaneous Deductions	\$ 23,721.01	\$ 28,635.24	\$ 4,914.23	17.16	\$ 173,254.16	\$ 190,821.65	\$ 20,287.29	10.48
AVAILABLE FOR INTEREST - Note "A"	\$ 42,985.51	\$ 31,826.67	\$ 11,158.84	-	\$ 2,383,277.76	\$ 1,008,432.76	\$ 1,354,844.00	-
Interest on Funded Debt	\$ 241,307.76	\$ 274,492.41	\$ 33,184.65	12.09	\$ 1,682,214.53	\$ 1,916,411.06	\$ 234,196.53	12.22
Interest on Unfunded Debt	62,346.12	17,990.37	44,446.75	248.33	403,275.15	128,415.57	274,869.61	214.04
Total Interest Deductions	\$ 303,555.88	\$ 202,391.78	\$ 11,264.10	3.85	\$ 2,085,469.71	\$ 2,044,826.53	\$ 40,663.06	1.99
NET INCOME	\$ 346,341.39	\$ 324,218.45	\$ 22,422.94	-	\$ 4,448,757.47	\$ 3,053,250.39	\$ 1,395,507.08	-

NOTE "A"

For comparison with estimates filed as Exhibit 29 and also the record in similar form set forth by Exhibit 43 Finance Docket No. 10913, the amount "Available for Interest" shown above should be adjusted by the following increases

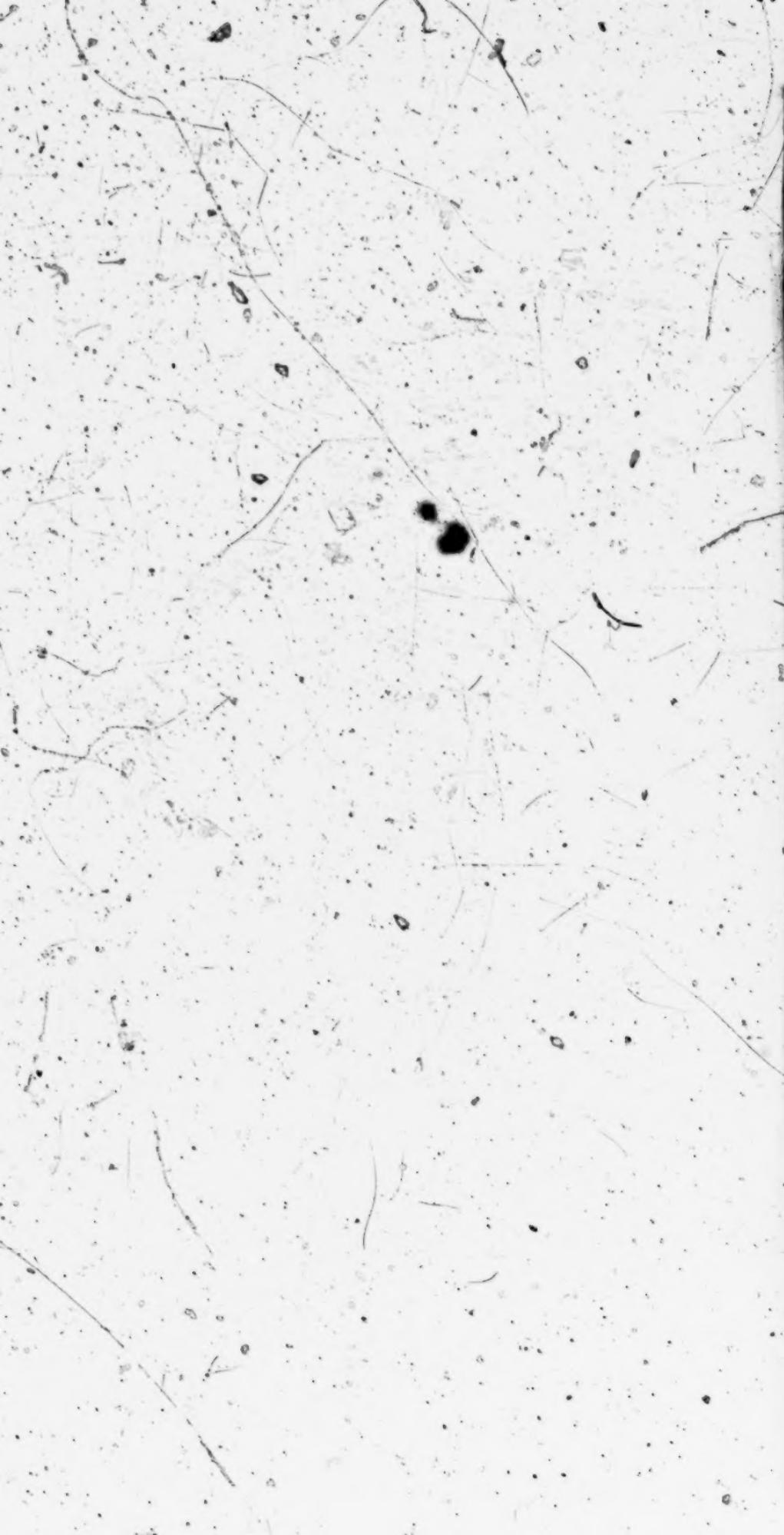
Include credit of \$ 216,361.69 by cancellation of accruals for year 1936 under Railroad Retirement Tax Act of 1936 and credit of \$ 27,869.61 by adjustment of accruals for period January 1 to May 31, 1937 to basis of "Carriers Taxing Act of 1937".

NOTE -利息额减少。

(Endorsed) FILED
Oct 3, 1939

Accounting Department
San Francisco, California
September 9, 1938

	MONTH		PERIOD	
	1936	1937	1936	1937
Operating Expense - Rehabilitation Program - H. of W. & S.	\$ 256,666.32	\$ 304,068.25	\$ 36,130.59	\$ 265,937.66
H. of E. - Rehabilitation Program (W.P.R.R.C.)	\$ 57,796.65	\$ 63,959.51	\$ 510,935.91	\$ 53,171.86
Amortization of Discount on W.P.R.R.C. First Mortgage Bonds	\$ 11,283.44	\$ 11,283.44	\$ 78,984.06	\$ 78,984.06
Available for Interest - Adjusted	\$ 70,167.55	\$ 87,036.98	\$ 1,050,238.04	\$ 451,213.32



If you will permit me to go one step further, we made an estimate for the year 1936 in exhibit 29. I should now like to offer a comparison of the actual for the eight months with the estimate for the eight months as set forth in exhibit 29. That is similarly prepared. It was not requested by Mr. Swaine, but I am quite confident it is desired by Mr. Swaine.

Mr. Swaine: That is all right.

Mr. Wilkinson: Mr. Nicodemus, your estimate for 1936, which is already in the record, has not been broken down by months, has it? It was not broken down by months.

Mr. Nicodemus: My impression is that it was. I would have to check back.

Examiner Wilkinson: And this that you show here as exhibit 29 is your own computation of what you estimated for the eight months in exhibit 29, which has not been in the record heretofore?

Mr. Nicodemus: I think that is correct. Of course, it was necessarily a monthly breakdown for his work sheets.

Examiner Boyden: Is there any objection?

(No response.)

Examiner Boyden: It will be received, with the understanding that if witnesses are desired to be presented, the [2052] Debtor will present them.

(Exhibit 41 was received in evidence.)

Mr. Nicodemus: The Debtor's plan provides for a voting trust. This provision in the plan was insisted upon by the Institutional Bondholders Committee. We assented to it with great reluctance.

The condition upon which we accepted the voting trust was that the voting trustees should be nominated by the railroad company and approved by the bondholders' committee. The right of original selection was expressly reserved to the railroad company.

We have made nominations and the Committee has approved two. They have approved Mr. Albert G. Milbank and Mr. Frank L. Polk, but we have been unable to secure their approval of any other voting trustee.

We have refrained from offering any evidence as to the reason for that deadlock, but the fact is we have been unable to get their approval of a third trustee. In that situation we have no alternative but to submit to the Commission suitable names from which the Commission, if it approves our plan in its present form or in its modified form, may select a third voting trustee, if it goes forward with the voting idea.

We expect to submit four names.

First, Mr. Edward D. Duffield, president of Prudential Life Insurance Company. We have not consulted Mr. [2053] Duffield, but we are quite hopeful that if he is selected by the Commission, he will be willing to serve.

Mr. Swaine: I think I should say that we have already told you that Mr. Duffield will not serve, and cannot serve.

Mr. Nicodemus: We never received any such information.

Mr. Swaine: I told you that last summer when the name was first suggested, in April, long before we came down here, because his other engagements are such that he does not feel that he should serve.

He would be an entirely acceptable person, of course.

Mr. Nicodemus: We are quite unaware of that communication.

Mr. Swaine: I told you or Mr. Schumacher at the time when the name came up.

Mr. Nicodemus: The second name we mention is the name of Mr. William Morgan Kingsley; Mr. Kingsley is president of the United States Trust Company, which is the trustee of the income mortgage, and he is the most logical person, it seems to us, to be on the voting trust that is primarily responsible to the income bondholders.

~~We also suggest Mr. William Church Osborn, and Mr. James H. Perkins.~~

Any one of those four men would be equally agreeable to us. [2054]

Examiner Boyden: Who are the two last mentioned gentlemen?

Mr. Nicodemus: Mr. William Church Osborn is a member of the New York bar, and very well known to a very large number of our security holders.

Mr. Perkins is president of the City Bank Farmers Trust Company.

Examiner Boyden: Can you give us the same information about the two nominees of the Debtor whom you first mentioned?

Mr. Nicodemus: Taking them in reserve order, Mr. Frank L. Polk was former Undersecretary of State, and he is a member of the firm of Davis, Polk, Wardwell, Gardner & Reed.

Mr. Milbank is, I think, president of the Milbank Foundation, and he is also head of the firm of Milbank, Tweed, Pope & Webb.

Examiner Boydett: A law firm?

Mr. Nicodemus: The Debtor rests, and is prepared to submit the case to the Commission.

Mr. Swaine: If the Examiners please, the persons who now constitute the formal Institutional Bondholders Committee, at a time before they were formerly organized as a Committee but were acting not only for their own three respective institutions, namely, the Metropolitan Life Insurance Company, the Prudential Life Insurance Company of America, and the Chase National Bank of the City of New York, but also informally for various institutions which subsequently constituted them a formal committee, participated in the negotiation of the Debtor's plan, and a number of the provisions of the Debtor's Plan as offered by the Debtor were the suggestions of that committee.

The plan as finally prepared by the Debtor and proposed by the Debtor in this proceeding was accepted by the three members of the then informal committee in behalf of their own institutional holdings, and in the sense that they had agreed that they would recommend it to other institutional holders, but conditioned on the acceptance of the plan by

the principal creditors of the other classes, particularly the acceptance of the commitment by the Reconstruction Finance Corporation and also acceptance by the Railroad Credit Corporation.

In connection with the matter of the Railroad Credit Corporation, certain legal questions were pointed out by counsel to the Committee to counsel for the Debtor, and a statement was made that certain modifications within defined limits might be made in the treatment accorded Railroad Credit Corporation as a condition of getting its acceptance to the plan. [2056]

At the hearings which we have thus far had in the reorganization proceeding, every class of creditors or every important creditor other than the institutional bondholders, being particularly Reconstruction Finance Corporation, Railroad Credit Corporation, and A. C. James Company, have appeared and objected to the plan and stated it was unacceptable to them.

The evidence introduced has also raised great questions in the minds of the Committee as to whether it would be wise to proceed with a capitalization of this character, particular whether the debt structure that is contemplated would be regarded as in the public interest by the Interstate Commerce Commission, quite apart from the question as to whether it was wise from the standpoint of the investors in the property.

In order, therefore, that the Commission might not be left without any alternative suggestion or

any plan based upon a different approach to the problem, the committee has prepared, and I now desire to propose on behalf of Metropolitan Life Insurance Company as the holder of \$6,852,400 principal amount of first mortgage bonds of the Debtor; the Prudential Insurance Company of America, as the holder of \$3,000,000 of the principal amount of said bonds; Travelers Insurance Company, as the holder of \$200,000 principal amount of said bonds; New York Life [2057] Insurance Company, as the holder of \$1,300,000 of said bonds; the Mutual Benefit Life Insurance Company, as the holder of \$500,000 of said bonds; Home Life Insurance Company as the holder of \$300,000 of said bonds; John Hancock Mutual Life Insurance Company, as the holder of \$300,000 of said bonds, and the Chase National Bank of the City of New York as the owner of \$25,000 of said bonds, and so far as it has an interest therein, as pledgee of \$4,464,000 principal amount of said bonds which are pledged with it to secure obligations of the Western Pacific Corporation which are now in default, a plan of reorganization of the Western Pacific Railroad Company, which I now offer.

Mr. Nicodemus: The Debtor objects to the filing of the plan and asks permission to state its grounds in the record.

Examiner Boyden: Proceed with the statement.

Mr. Nicodemus: By the terms of Section 77 (d) of the Bankruptcy Act, no plan of reorganization may be filed during the hearings provided for by

that section, except with the consent of the Commission.

The Commission should decline to permit the Institutional Bondholders Committee or any group of bondholders represented by said Committee, to file a plan of reorganization, for each and all of the following reasons: [2058]

First, that said Committee and the two principal bondholders represented by said Committee, namely, the Metropolitan Life Insurance Company and the Prudential Insurance Company, prepared, promulgated, and procured the filing by the Debtor as its plan, to which they agreed to give their unconditional support, the plan filed herein on February 7, 1936, and these same interests cannot now file a new plan consistently with the principles of good faith to the Debtor.

Second, that the Debtor's plan filed herein on February 7, 1936, was a compromise plan which involved substantial concessions to such Committee and the said institutions, which would not have been made except for the unconditional commitment of said Committee and said institutions to support said plan and to cooperate with the Debtor in bringing about an early and economical reorganization of the Debtor, and the Commission should not aid the Committee in withholding their part of the bargain and thereby hindering and delaying an early reorganization of the property.

Third, that the Debtor's plan filed herein on February 7, 1936, is based upon sound principles and

may readily be modified in detail to meet any new views consistent therewith which said Committee may now desire to submit to the Commission. [2059]

Fourth, that there are more than 4500 individual and corporate holders of First Mortgage Bonds of the Debtor, only 9 of whom are represented by this Committee. In many respects, the interests of these small individual and corporate bondholders are different from and in conflict with the interests and objectives of the nine institutions represented by said Committee.

The individual and small corporate bondholders as a class need their income currently, whereas the nine institutions represented by said Committee not only do not need their income currently, but may for many reasons find it greatly to their interest to delay reorganization and take their income five or ten years hence in the form of an increment to capital.

The Debtor submits that the filing of a new plan by said Committee before the Commission has acted upon the pending plan is not necessary and will invite long and costly litigation.

If however, a new plan is to be filed on behalf of first mortgage bondholders, the Commission should not permit it to be filed by said Committee, but should require the organization under Section 77 (p) of a representative committee that will sponsor an early reorganization on terms fair and equitable to junior creditors and stockholders. [2060]

Examiner Boyden: Referring to your last statement there, you do not, as I understand it, take the position that this Committee cannot legally present the plan?

Mr. Nicodemus: I think it is very misleading to the public to have a committee that under the law cannot represent the small bondholders.

Examiner Boyden: But your answer to my question is "No", is that correct?

Mr. Nicodemus: No.

Mr. Swaine: In that connection, it should be pointed out that this plan provides that if the plan is approved by the Commission, the Committee will qualify to represent all bondholders as a general committee. It is my understanding that in the other proceedings, plans have been proposed by such committees.

Mr. Nicodemus: With reference to the conditions, I am obliged to state that at no conference at which I was present—and I have been present at all of them—was any condition ever imposed by this Committee on its approval of our plan. At the very last conference, which immediately preceded the filing of the plan, counsel for the Committee asked that the Committee impose as a condition that the Debtor first obtain the approval of the plan by the Reconstruction Finance Corporation. We protested, and counsel was overruled, and the Committee [2061] agreed that the plan might be filed without any such condition as was asked by their own counsel.

Therefore, I am at a loss to understand how counsel for the Committee has repeatedly reasserted that there was a condition imposed. The approval of this plan by the Debtor, its submission by these Institutional Bondholders to the Debtor, took place on June 23, 1935, and the minutes clearly show that no condition was imposed.

These bondholders submitted the plan to the Debtor and the Debtor was the interest that accepted the plan.

So for all the reasons that we have outlined above, we ask that the Commission refuse to exercise its discretionary authority to permit this new plan to be filed.

Mr. Swaine: I think it is unfortunate a perhaps irrelevant question of personal veracity should be introduced. All I can say is that I, too, attended every one of the conferences except one, and the members of the Committee agreed with me, first, that this plan was not promulgated at any time by this Committee.

As I stated in introducing our own plan, we participated in the negotiations, and many things in the Debtor's plan were the result of concessions to the Committee.

But the plan was not prepared by the Committee. As its counsel I had absolutely nothing to do with the [2062] printing of the plan. The printing was entirely in the hands of Mr. Nicodemus, and many suggestions which I made were rejected.

The Committee is also entirely in accord with me in the view that our commitment has at all times been conditioned on, first, that the plan proceed promptly; second, that it be accepted by the Reconstruction Finance Corporation; third, that it be made acceptable to the Railroad Credit Corporation; and fourth, that the modification which I proposed at the first hearing with regard to insuring dissenting classes of creditors a cash alternative, should be embodied in the plan.

I do not believe, however, that that is relevant. Let us assume for the sake of the argument that the Committee did accept this plan unconditionally in the summer of 1935. I submit that there is nothing, either in law or morals, which prevents the Committee in the face of all the evidence in this record, in the face of the additional evidence that we have of the Commission's point of view through statements that have been made in the hearings, not only in this proceeding but in many other reorganization proceedings.

At this time, from coming forward and saying that it perhaps was mistaken before, and that it feels that in the interest, not only of the bondholders but of the [2063] public a plan more along some other lines to be suggested.

For that reason I will adhere to the proposal of the plan and ask the Commission's leave to propose it.

Examiner Boyden: The objections of counsel for the Debtor with respect to the proposing of this

plan are overruled, and the plan received for the purposes of this hearing.

In order that the record may be clear, I believe it should be assigned exhibit No. 42.

(Exhibit No. 42 was received in evidence.)

[Printer's Note: Exhibit No. 42 is here omitted as same is identical with "Suggested Plan of Reorganization of the Western Pacific Railroad Company. Effective Date January 1, 1937" set out at page 48 of this printed record.]

Mr. Swaine: The Institutional Bondholders Committee desires to introduce no additional evidence. It rests the plan upon the evidence introduced by the Debtor.

I want to make, however, one statement in respect to a provision of the plan:

The plan contemplates that the new money shall be raised by the issue of ten million dollars of new first mortgage bonds.

The plan states that it is hoped that those can be 4 per cent bonds, maturing in 1967, redeemable at par and accrued interest.

Inasmuch, however, as the time at which the new bonds will be offered to raise the new money cannot now be definitely foretold, and the conditions that may exist in [2064] the money market at that time cannot now be known, the plan provides that with the approval of the Commission and the court, the interest rate on those bonds may be increased to not more than 5 per cent, the period of their

maturity may be shortened to not earlier than February 1, 1952, and a premium for redemption may be granted not exceeding 5 per cent.

The plan contemplates that these bonds, together with blocks of stock, shall be offered to raise the new money, first, to the sole stockholder and junior creditor of the Debtor, namely, the Western Pacific Corporation.

To the extent that the offer is not availed of by that corporation, the right is granted to the holders of the junior mortgage bonds of the Debtor as collateral, namely, the Reconstruction Finance Corporation, Railroad Credit Corporation, and A. C. James Corporation, in the proportions in which they held those junior bonds as collateral, with the right in any one of them to take any part of the new bonds and stock not taken by the other holders of those bonds as collateral; and to the extent that they do not take the new bonds and stock and provide the new money, the right is afforded to the first mortgage bondholders to take the new bonds with blocks of stock.

The plan contemplates the possibility of underwriting. No underwriting agreement has been made as yet, because [2065] you cannot tell either what the terms of the bonds will be, if they are offered some time in the next year, or what a proper underwriting commission would then be, it being felt that that is a detail which should be passed upon by the Commission and the court at the time the plan is ready to go forward.

The Institutional First Mortgage Bondholders, were the plan to be promulgated today, authorize me to state that they do not believe any underwriting would be necessary, as the bonds upon the terms provided in the plan, namely 4 per cent bonds maturing in 1967, together with the stock which goes with them, would in their judgment be sufficiently attractive that they themselves would be willing not only to take the bonds which are attributable to their own bonds, but to arrange for taking up the balance of the ten million dollars.

They ask that that assurance be given in the light of present conditions, and with the understanding that as conditions change, it might be necessary to make modifications within the framework provided in this plan.

Examiner Boyd: Was this plan worked out, Mr. Swaine, in the light of the reports which we have now in the record as to the probable amount of money which it would take to restore the property of the Debtor?

Mr. Swaine: Yes. [2066]

Mr. Coulson: Is it proper, in view of the fact that this plan is not presented by a witness, to ask counsel for the Committee of Institutional Bondholders a question or two about it for information?

Examiner Boyd: Yes, indeed.

Mr. Coulson: Mr. Swaine, in the original plan which was presented as the Company plan; as I understand it the new money came in on an equal footing as to security with a part of the first mortgage

bond money. I understood the justification for that to be that it was expected the Reconstruction Finance Corporation would furnish that new money and would receive as part compensation therefor the advance of their existing debt to a higher rank as a creditor than it would otherwise have.

In a hasty examination of your plan today, I note that you still have the new money come in with an equal footing as to security with a part of your first mortgage debt and without the feature of it being provided by the Reconstruction Finance Corporation, with the resultant acceleration of part of the debt.

What are the factors which lead your Committee to suggest making this new money, which is to be offered initially to stockholders and then to junior debtors, take equal rank with a part of your first mortgage debt, instead of being prior to it, as would normally be the [2067] situation?

Mr. Swaine: I object to your statement, "as would normally be the situation."

Mr. Coulson: I do not know of any instances where that would be the fact.

Mr. Swaine: I could go to most of the reorganizations of recent years and show you many, the last St. Paul reorganization, for instance.

Mr. Coulson: I should be glad to.

Mr. Swaine: There the assessment was over sixty millions of dollars. The bond was not a first mortgage bond, indeed, it was a third mortgage bond on part of the property.

As I understand the ruling principle, it is that the bonds should be sufficiently good to attract the new money but not so good as to do any unnecessary damage to any other interest in the situation.

It is the view of our Committee that with the reduced amount of first mortgage bonds which this plan contemplates—in that connection, let me interpolate the Debtor's plan gives the first mortgage bondholders 30 per cent of the fixed charge obligations.

We doubted that we could get that good treatment in the light of the earnings record and have our bonds really good; and therefore, ourselves suggested that we be cut to 20 per cent. That means that there is a total issue [2068] under this plan of twenty million dollars of first mortgage bonds.

It is the view of our Committee that those bonds are absolutely good, that the probability is that their interest will be earned twice over within a few years, so that they can very quickly become legal investments, and ought to stay legal investments; and they are, therefore, good enough to provide the new money, and the best evidence of that is that we are prepared to take them ourselves on the terms on which the plan proposes to offer them, to provide the new money.

We therefore do not think it either advisable or necessary that the bonds to be issued to provide the new money should be the sole first lien, that is, should be so issued that there would be only ten million dollars instead of twenty million dollars

of first mortgage bonds, as our plan contemplates, for by so doing the position of the first mortgage bondholders would be unnecessarily depressed.

Mr. Coulson: I still think it is proper to suggest to counsel for the Institutional Bondholders that if this failure to make new a prior lien on the property is to be pressed by his Committee, the Commission might well be furnished with instances of re-organizations other than the St. Paul reorganization, which, for obvious reasons, [2069] both because it was Mr. Swaine's workmanship and because it has not been particularly successful, ought not to be an example.

I would like to know of instances where new money comes in.

Mr. Swaine: Has there been any successful re-organization over the last twenty years?

Mr. Coulson: Oh, there have been many. History has not changed much.

Mr. Swaine: No, there have not.

Mr. Coulson: I think it would be proper to ask, and I would like to know for my own information whether there are justifications for this new money coming in, if it is to be offered to the equity and then the junior debt, except as prior lien money.

Examiner Boyden: I think this is a matter that might well be discussed on brief.

Mr. Coulson: I think it is, but I would be glad to have the information as to other instances, if I could get that pertinent information.

Mr. Swaine: We will supply for the Commission a statement of the securities that have been issued

for new money in all the railroad reorganizations in the last say 25 years.

Mr. Coulson: I would like to ask one further question [2070] about it, whether your Committee has considered and determined whether the securities issued to the first mortgage bondholders and other creditors for accrued and unpaid interest, unearned interest, will constitute taxable income to the security holders receiving such securities.

Mr. Swaine: We have considered the problem, and if you will note, it is not stated that these securities are received in respect of interest, it is merely stated that the first mortgage bondholders, and, similarly, the three junior creditors, the Reconstruction Finance Corporation, the Railroad Credit Corporation and A. C. James Company, will receive something which is equal to the aggregate value of their present obligations, plus all interest accrued to January 1, 1937.

It is not stated that they are receiving it specifically for interest.

Mr. Coulson: Was there any determination by your Committee as to its taxable character?

Mr. Swaine: No. Indeed, I understand that there is a certain lack of unanimity among lawyers on that question.

Mr. Coulson: Has any estimate been made by your Committee as to the taxable burdens involved in accumulating the capital fund contemplated by this plan?

Mr. Swaine: Yes, we have, and they are substantially the same as the tax burdens which would re-

sult from the [2071] Debtor's plan. We have made computations under both plans, and there is no substantial difference in that respect.

Mr. Coulson: I may say to the Commission that, of course, as representing the A. C. James Company, I am very much interested in the feature that I note in this plan of putting the A. C. James Company in a relative status in its class of junior creditors based not on the debt, not on its advances, but on the gross amount of security by way of collateral held by that creditor and other creditors.

However, that is a matter which is perhaps, as the Examiner suggested, one that may be dealt with better by brief than by an attempt to find out the theory or basis of such classification of junior creditors at this time.

Examiner Boyden: Of course, that may be a matter considering which counsel could present expert testimony, if you desire to do so. I am not trying to foreclose you at this time from doing that if you desire to.

Mr. Coulson: I make this suggestion, Mr. Examiner: If we are to have before the Commission in this proceeding not one plan, but with suggestions for modification, which is the theory on which I had hoped these proceedings would go forward, but a number of plans, I think it might be well and desirable for the Commission to bear in [2072] mind that ample time after today's hearing ought to be given to other creditors to present plans, if the pres-

entation of ideas as to the plan is to be in that fashion.

I was not entirely happy with Mr. Swaine's statement that the A. C. James Company objected to the company plan. It did object strenuously to certain features of that plan, which it outlined in its petition of intervention, which seemed to make this attempted plan of reorganization unnecessarily complicated and be undesirable in many respects.

It did state, however, an adherence to the general principle of the plan.

As to the plan which Mr. Swaine has now presented, it seems to me so far as the creditor I represent is concerned, equally objectionable, not merely from the standpoint of that creditor's interest as a junior debtor, but objectionable in many many respects that run to the public interest and are matters which will be considered before the Commission.

I would like, myself, opportunity to consider the question whether those factors and those conditions are best presented to the Commission through briefs submitted which comment on the features which seem to us clearly undesirable as to both the plans, or whether it would be better to make the attempt to further complicate the [2073] target here by putting in the third suggested plan, which might be somewhat simpler—at least, I hope it would be somewhat simpler—in structure than either of those now before the Commission.

I do ask, therefore, that the parties be given ample time to consider and determine that question.

Mr. Swaine: As far as I am concerned, of course, I would expect ample time, which I would say would be about thirty days, but I want in that connection to point out to the Examiners that Mr. Coulson as well as all the other counsel have had proofs of this plan substantially as it is ever since back in March or April, and that it was, as they knew, the intention to propose this plan in April but at their request it was withheld in the hope that as the result of meetings that we might have an agreement could be reached.

We have spent all the time without any agreement having been reached, and therefore there should not be any surprise on the part of anybody, and we ought to be able to move with reasonable expedition.

Mr. Coulson: Let me just a moment correct on the record the implication, which I do not like; that I have been riding on my oars here. I wrote Mr. Swaine early in the summer and asked him whether there was any intention of presenting this plan, when I first received a [2074] copy, and was told no determination had been made at all. I talked to Mr. Stedman of his Committee, Mr. Ecker being in England, more than three weeks ago and asked him the specific question whether the plan was going to be presented, as, if it was to be presented, I wanted to study it.

He said no decision had been made. I have not been resting on my oars here.

Mr. Swaine: The absence of decision was looking toward a possible agreement.

Mr. Coulson: I did not request that you not file the plan.

Mr. Swaine: No, you did not.

Mr. Nicodemus: We certainly never made any such request.

Examiner Boyden: If any of the parties desire a witness to be put on the stand with respect to your plan, you will present such a witness?

Mr. Swaine: I am willing to be the witness, myself, right here and now.

Mr. Nicodemus: The 30-day period that Mr. Swaine mentioned is for filing briefs or to give creditors an opportunity to file a third plan? I did not quite understand. The thirty days is not an adequate time for us to prepare a brief in support of our plan and to analyze his. [2075]

Mr. Coulson: I do not think it is adequate for either purpose. With two plans before us, we then are faced with equal complications, wholly aside from this controversy as to the voice of Jacob and the hand of Esau, and vice versa. But they both are complicated, they both need to be studied in the light of the record, and I think that thirty days is a quite inadequate period to put in a brief. It is certainly inadequate if any of us undertake the labors of preparing a plan which does strive for some simplicity.

Examiner Boyden: Could you not advise the Commission within thirty days whether or not you desire to present a plan, Mr. Coulson?

Mr. Coulson: I could not prepare either an

adequate brief or a plan within thirty days. I might very well arrive at a conclusion then, but it seems to me thirty days is a short period for the problem that is presented by this double target that has been set ~~for~~ for us, if we are going to be genuinely helpful to the Commission in its consideration.

Mr. Swaine: The A. C. James Company intervening petition specified in great detail the modifications, I will call them, instead of objections, in order to be more euphonious, Mr. Coulson, which the A. C. James Company desire to have made in the Debtor's plan. That was filed [2076] in April, so that Mr. Coulson had fairly well matured his ideas as early as April. And with cogitation interrupted only by a short vacation, perhaps he can do this in less time than he anticipates.

Mr. Coulson: That was not at all in the light of the record, that was merely an attempt to specify for the Commission some of the incidents of the Company plan which we thought deserved consideration in the hearings, and it was the purpose of the summary specification in the intervention petition.

Mr. Swaine: All counsel should, of course, have adequate opportunity to analyze and attempt to solve any problem that lies in this record. On the other hand, this is a comparatively simple situation, and I think we ought to strive to make good on the statements that were given out by the Debtor's management in the summer of the 1936 that this was going to be one of the earliest reorganized railroads.

Mr. Nicodemus: It would have been.

Mr. Swaine: We would like to move ahead with as great expedition as is consistent with giving all parties reasonable opportunity to present their views.

Mr. Nicodemus: We came down here at the first hearing and found that we had a bitter adversary that we had not anticipated. [2077]

Examiner Boyden: Mr. Nicodemus, with respect to my request that you furnish monthly income statements for the last part of 1935, I was under the impression at that time that you had in the record, in your exhibit 40, monthly figures for the first part of 1936.

Since you do not have those, may I ask that you furnish those with the other?

Mr. Nicodemus: I will be glad to. You want a monthly breakdown of exhibit 40?

Examiner Boyden: Yes, for the first eight months of 1936, as well as of the monthly figures for all of 1935.

Mr. Nicodemus: I will have that within ten days.

Examiner Boyden: It seems advisable that this proceeding be adjourned in order to give counsel an opportunity to review the record and determine the course of action that they desire to follow.

For that reason, the hearing is adjourned until October 26th. In the meantime, counsel for the Debtor will furnish the information that has been requested.

Mr. Swaine: Is the purpose of this adjustment

to have oral argument if counsel decides not to present another plan?

Examiner Boyden: If counsel desires not to present another plan, it would seem that the hearing could be closed and a date set for briefs by order of the Commission [2072] without calling the hearing again.

Mr. Nicodemus: That is what we would like to have.

Examiner Boyden: If Mr. Coulson or other parties will advise the Commission of their conclusions as to whether or not anything further will be presented, that will facilitate a decision in that matter. Otherwise, the Commission will have to call the hearing on that date.

Mr. Swaine: That is, on the 26th?

Examiner Boyden: On the 26th.

Mr. Swaine: Otherwise we will get a notice fixing the date for the filing of briefs and argument before the Commission?

Examiner Boyden: If the Commission is advised that no further proceedings are necessary sufficiently in advance of October 26th so that the order can be issued and the parties notified, the proceeding will be terminated in that way.

Mr. Coulson: Do I understand, Mr. Examiner, that if it is desired to have further testimony introduced at that time, because of questions that are suggested by careful examination of Mr. Swaine's plan as presented today, it will be possible to do that

by timely notice at that adjourned hearing on the 26th of October?

Examiner Boyden: That will be perfectly proper, but I believe that any party should notify the other parties [2079] sufficiently in advance of the hearing so that the parties can have the witnesses here on that date.

Mr. Coulson: Yes.

Mr. Nicodemus: If no witnesses are required, then what happens? The Commission closes the case and fixes a date for filing briefs?

Examiner Boyden: If the parties decide that no hearing is necessary on that date, the Commission will close the case and set a date for filing briefs.

Mr. Nicodemus: We could shorten up that time if we started to work on the briefs right away on the theory that there would be no hearing on the 26th.

Mr. Swaine: That is a very happy suggestion.

(Whereupon, at 11:30 o'clock a. m., an adjournment was taken until 10:00 o'clock a. m., Monday, October 26, 1936.) [2080]

Before the
Interstate Commerce Commission

Finance Docket 10913

WESTERN PACIFIC RAILROAD
COMPANY REORGANIZATION.

Anteroom A, I. C. C. Building,
Washington, D. C.,
Monday, October 26, 1936.

Met pursuant to adjournment at 10 o'clock a. m.

Before:

Examiner Harvey H. Wilkinson.

Appearances:

Same as heretofore noted, and

James L. Homire, Washington, D. C. appearing
for Reconstruction Finance Corporation. [2082]

Proceedings

Examiner Wilkinson: Are you ready to proceed
with the hearing in Finance Docket No. 10913?

Mr. Nicodemus: The Debtor is prepared to go
forward.

Mr. Wood: Before we proceed, Mr. Examiner, I
would like to file a petition of the trustees of the
Western Pacific Company first mortgage for leave
to intervene.

Mr. Nicodemus: No objection on the part of the
Debtor.

Mr. Swaine: No objection on the part of the bondholders.

Examiner Wilkinson: The petition of trustees of the Western Pacific Railroad Company First Mortgage, dated June 26, 1916, for leave to intervene is received and granted.

(The petition for leave to intervene of the trustees of the Western Pacific Railroad Company First Mortgage, dated June 26, 1916, was received and granted.)

Examiner Wilkinson: Will you supply copies to the parties to the proceeding, please?

Mr. Wood: I have as many copies as you will need here.

Examiner Wilkinson: In that connection I note from the record that while the petition of the A. C. James Company for leave to intervene was received, the record does not show that it was granted.
[2085]

Let the record show that it is granted on the date that it was filed.

Mr. Coulson: Thank you.

Mr. Nicodemus: There are one or two things that we would like to clear up first this morning.

Examiner Boyden asked for an exhibit which I would like to get in. We offer, pursuant to the request of the Examiner, a new exhibit which is the "Consolidated Revenues, Expenses and Income" of the Western Pacific System for the months January to August, 1936, broken down by months, and a similar statement for the calendar year 1935.

Examiner Wilkinson: Are they two separate statements?

Mr. Nicodemus: No. They are separate, but we will offer them as a single exhibit. We have enough copies for distribution to counsel.

Examiner Wilkinson: The two statements just referred to by counsel will be received as Exhibit No. 43, if there are no objections.

(Exhibit No. 43, by counsel, received in evidence.)

Mr. Nicodemus: Section 8 of the Debtor's plan, in subdivision A and subdivision C refers to certain unsecured claims against the Debtor.

Since the last hearing counsel for the Institutional Bondholders has requested a statement showing the [2086] amount of those claims. I have received such a statement from the general auditor, and introduce it as our exhibit tendered at the request of Mr. Swaine. That is also in sufficient numbers for distribution.

Examiner Wilkinson: Is there any objection to the receipt of this statement in evidence?

(No response.)

Statement entitled "Estimate of the Probable Payments after October 24, 1936 on claims incurred Prior to August 2, 1935," is received as Exhibit No. 44.

(Exhibit No. 44 received in evidence.)

Mr. Nicodemus: That concludes the Debtor's case on direct.

Mr. Swaine: The plan proposed by the Institutional Bondholders' Committee on page 3 in the introductory statement makes this statement:

"Since all other classes of securities of the railroad company other than the equipment obligations are entirely junior in lien to the first mortgage, obviously any stock so allotted to the present first mortgage bondholders should have rights as to both assets and income prior to those stocks allotted to such other creditors and stockholders of the railroad company."

In correspondence since the last hearing Mr. Willard, representing the Railroad Credit Corporation, [2087] has indicated that he questions the accuracy of the statement upon which the conclusion is based, namely, that all other classes of securities other than equipment obligations are entirely junior in lien to the first mortgage.

When I drew that I honestly believe it was so, because it so stated in the manuals and in all the documents which I had ever read describing the bonds.

I have just checked, and I find that there are certain stocks of certain subsidiary companies as to which there is a record indicating whether or not they have value in this proceeding. At this hearing I would like to have the trustee bring more precise proof as to the exact lien of the first mortgage and the securities that are pledged under the General and Refunding Mortgage.

Also since the last hearing there has been a question raised by some bondholders as to the exact meaning of Clause 3 on page 8 of the Bondholders' Plan. That clause provides that "any then remain-

ing available net income"—that is, after the capital fund—"shall be applied to the payment on October 1st and April 1st in each year commencing October 1, 1937, of interest on the then outstanding new income mortgage bonds, * * * accrued during the income period ending on the next preceding June 30 or December 31, respectively, and to the [2088] extent unpaid any interest which shall be accrued on said bonds in respect of six income periods next preceding such income period."

The question that has been raised is whether the income is applied in order of seniority of those various unpaid income coupons, or in reverse order or *pari passu*.

The same question would apply to a corresponding provision in the Debtor's plan.

The thing that would have been intended is perfectly obvious, and to that end I wish to add to that provision these words:

"such payments to be applied first to unpaid interest for the earliest of such income periods for which interest remains unpaid in whole or in part."

Examiner Wilkinson: This last statement of yours is in the nature of an amendment to your plan?

Mr. Swaine: It is a clarification of the plan, yes.

Similarly, on page 17 of the Institutional Bondholders' Committee Plan, the first full paragraph, the question has been raised by certain of the Institutional Bondholders as to what would happen if the court should fix a prohibitively high upset price. The provision is that upon such sale the property

shall be purchased for the benefit of the new company in the reorganization.

It was pointed out that if the court should set an [2089] upset price of \$100,000,000 this seemed to make it mandatory to go and pay it, and of course there would be no way the committee could raise the cash to pay it. It has to pay with securities.

Therefore, to clear that point up, I want to make this modification of that paragraph, after the word "shall," being the seventh word of the paragraph, inserting this clause, "if the upset price shall not exceed the amount at the time of sale due for principal and interest on first mortgage bonds, and otherwise if the Committee shall so determine, may," so that it makes it mandatory up to the full payment of the first mortgage bonds and permissive in respect of any upset price fixed by the court above that amount.

At the last hearing, page 311 of the record indicates this colloquy:

"Mr. Coulson: I think it would be proper to ask, and I would like to know for my own information, whether there are justifications for this new money coming in, if it is to be offered to the equity and then the junior debt, except as prior lien money.

"Examiner Boyden: I think this is a matter that might well be discussed on brief.

"Mr. Coulson: I think it is, but I would be glad to have the information as to other instances, if I could [2090] get that pertinent information.

"Mr. Swaine: We will supply for the Commis-

sion a statement of the securities that have been issued for new money in all the railroad reorganizations in the last, say, twenty-five years."

Pursuant to that agreement on my part, Mr. Groome, my associate, has examined all the plans of reorganization of railroads of any size commencing with the Richmond & Danville, now the Southern Railway, in 1892, down to date. I have prepared an exhibit which shows under the first column the name of the railroad, under the second column the date of its reorganization, under the third column the amount of the money received in the reorganization, under the fourth column the source of new money, under the fifth column the securities issued in exchange for the new money, and under the sixth column the total capital structure of the reorganized company, from which can be determined, of course, the relative position of the new money in the new capital structure.

Pursuant to Mr. Coulson's request that that be furnished, I now furnish it, and Mr. Groome, who prepared it from the original sources, is here for cross examination if anybody would like to cross examine him.

Mr. Nicodemus: Debtor objects to it on the specific ground that none of those reorganizations was affected [2091] under Section 77 of the Bankruptcy Act, and therefore this entire statement is irrelevant.

Mr. Coulson: And I object, Mr. Examiner, not only because this is incompetent, irrelevant, and im-

material, as we say in the courts of law, but it is clearly not the best evidence or even any evidence. I agree entirely with Examiner Boyden that any such material belongs in the briefs and not cluttering up this record. Mr. Swaine took quite too seriously my inquiry, which was designed to bring out whether his draftsman here was using the St. Paul as a model. I did not mean to clutter up this record by that innocent question after it had served its purpose. I certainly had no desire to have an exhibit here in this record.

Examiner Wilkinson: As I understand it, then, if you have made such a request you now withdraw that request?

Mr. Coulson: My request was that I personally would be glad to see it, but I quite agree with Examiner Boyden it ought not to be in the record. I think it is purely historical, Mr. Examiner.

Examiner Wilkinson: In the light of that, do you care to pursue that?

Mr. Swaine: The tender was a tender made pursuant to his request. That seemed to satisfy Mr. Coulson at the time. If the objection is that the analysis is not the [2092] best evidence, I think we have all of the original plans here, and we would be very glad to introduce all of those plans of reorganization.

Mr. Nicodemus: Our objection did not go to that point. Our objection was fundamental.

Examiner Wilkinson: In view of Mr. Coulson's

statement and the objection, do you still wish to offer it as an exhibit?

Mr. Swaine: Yes.

Mr. Clay: We object also that it is incompetent, irrelevant, and immaterial.

Examiner Wilkinson: The objection is sustained.

Mr. Swaine: We will put it in our brief, as Mr. Coulson suggests.

Examiner Wilkinson: Are you through, Mr. Swaine?

Mr. Swaine: Yes. I want the First Mortgage Trustee to make further proof as to that matter.

Examiner Wilkinson: Are you in a position to comply with that request at the present time?

Mr. Wood: If I understand Mr. Swaine, you are not speaking now of the pledged securities? I am not prepared to introduce evidence on that.

Mr. Nicodemus: Do I understand that you amended page 3 of your plan?

Mr. Swaine: No; I have not amended it. There is a [2093] technical error there. I want the exact proof. The statement on page 3, I said, was that the other creditors were in all respect junior to the first mortgage bonds. On inquiry I find there are a few stocks under the junior mortgage that perhaps are not pledged under the senior mortgage. I think there may be some question about that.

Mr. Coulson: Yes; there is a further question also as to the relative liens as to the Northern Extension, which at an appropriate time might be called to the attention of the Commission.

Mr. Swaine: That is the point which the trustee will proceed on with proof.

Mr. Wood: I am prepared to go ahead on that.

On this question of the securities, Mr. Swaine, I was not anticipating that the point would be raised.

Mr. Groome has handed me this, which is the Debtor's annual report, but of course that may or may not be the same as the trustee's records under the two indentures. I offer this for what it is worth.

Mr. Swaine: I am perfectly willing to accept Mr. Curry's statement as to where those pledged stocks are.

Mr. Nicodemus: Let me clarify the record to find out whether this proof is going in in support of the intervention of the first mortgage, or is it a part of the plan? [2094]

Mr. Swaine: It is a fact upon which the Commission will draw every one of the plans here or adopt its own plan. The record is rather unsatisfactory on the question of the relative liens. Mr. Elsey on the stand made the statement that the first mortgage was a first lien upon all the property. That is all there is. Mr. Willard in a letter to me has disputed that. On investigation I find that he may be right as to certain stocks, and I therefore think that the Commission ought to have the facts.

For that reason I asked the first mortgage trustee to establish before the Commission—

Mr. Nicodemus: Is this part of your proof, that is what I am trying to ascertain.

Mr. Swaine: Yes, it is part of our proof.

Mr. Clay: I would like to remark that if it is a dispute between the first mortgage trustee and the second mortgage trustee, the holders of the General and Refunding Bonds would want the trustee of the General and Refunding Mortgage to state its position also.

Mr. Wood: I think perhaps I ought to make perfectly clear the relative positions of the trustees here.

Mr. Nieodemus asked whether we were putting this in in support of Mr. Swaine's Committee's plan. Of course, the first mortgage trustees represent not only the bonds [2095] that are held by the committee but all of the outstanding bonds, many of which are not represented by the committee, so that we are not taking a position as to one plan or the other.

We are here prepared to put in evidence to sustain the priority of the lien of the first mortgage.

We filed a petition of intervention on behalf of the first mortgage trustees. One of those trustees is Mr. Samuel Armstrong, who is a vice president of the Chase National Bank. The Chase National Bank as a bank is trustee under the General and Refunding Mortgage. There is a clear conflict of interest indicated by these questions that the General and Refunding Mortgage Bondholders I understand are going to raise as to the priority of the lien.

We learned that only last week and in view of that conflict, last Friday the General and Refunding

Mortgage Trustee, the Chase National Bank, sent out notices of resignation as trustee under the General and Refunding Mortgage, and wrote letters to each of the holders of those bonds telling them of its position. Therefore, the General and Refunding Mortgage Trustee is not participating in this hearing as trustee, and as counsel I am not participating, although my appearance has heretofore been included under both mortgages, as counsel for the [2096] General and Refunding Mortgage Trustee.

I believe that that will not prejudice the General and Refunding Mortgage Bondholders because I think they are all represented here individually by their own counsel; but I think that ought to be made clear on the record.

Mr. Clay: We have not as yet been able to obtain a statement from the General Mortgage Trustee of what it claims a first lien on. You see, the first mortgage trustee and the General and Refunding Mortgage trustee are represented by the same counsel, or have been until today.

Mr. Wood: They have been until today.

Mr. Clay: Yes.

Mr. Wood: But in view of the shortness of time the most we could do was to send out these letters and notices of resignation. There has not been time to substitute trustees, and we cannot appear here in two capacities with a conflict of interest.

Mr. Nicodemus: What is the procedure for substituting a trustee?

Mr. Wood: Under the General and Refunding Mortgage?

Mr. Nicodemus: Yes.

Mr. Wood: There is a notice to the railroad company which has gone out last Friday and a publication in two newspapers, one in San Francisco and one in New York. [2097] That I understand is being made I think Wednesday. Then 30 to 60 days have to elapse after the notice unless a substitution is made prior to that time, in which case it takes effect immediately.

Mr. Groome: Who can make the substitution?

Mr. Wood: A majority of the bondholders have the right to appoint and the railroad company has the right to make an interim appointment by resolution of its board or, I think, its executive committee.

Mr. Clay: When does the resignation of the General Mortgage trustee become effective?

Mr. Wood: The provision of the mortgage is thirty to sixty days from the date of the publication of the notice, but if a substitution and appointment of a new trustee is made before that time it becomes effective immediately. In other words, you can substitute a trustee immediately without waiting for the period to elapse. I think the date fixed in the resignation is December 23. I am not sure; some time in December.

Mr. Swaine: I would like to say that I agree entirely with Mr. Wood's statement that this testimony is not offered in support of any plan, it is offered to give the Commission the facts as to the lien. It bears equally upon the Debtor's plan.

Mr. Clay: If the second mortgage trustee does not agree [2098] with the first mortgage trustee, there will be a dispute, and it will have to be determined which has the superior lien.

Mr. Swaine: Oh, quite.

Examiner Wilkinson: Proceed, Mr. Wood.

Mr. Wood: On the question of the pledged securities I will ask Mr. Curry to take the stand, please.

M. J. CURRY

testified further as follows

Direct Examination

Examiner Wilkinson: Mr. Curry, you were sworn before in this proceeding?

The Witness: I was sworn at the first hearing.

Q. (By Mr. Wood) Mr. Curry, you are a vice president and assistant secretary of the Western Pacific Railroad Company?

A. Vice president, assistant secretary, and assistant treasurer of the Western Pacific Railroad Company, yes.

Q. You are familiar with the annual reports published by the railroad company? A. Yes.

Q. I show you what purports to be a copy of the report for the year ending December 31, 1935. Is that a copy of the annual report as published?

A. Yes, sir. [2099]

Q. I wish to call attention to the list of investments in affiliated companies under date of December 31, 1935, appearing on page 15 of the report.

(Testimony of M. J. Curry.)

It is marked Table No. 5. It contains first a list of securities, which are described as pledged under the first mortgage, then a list of securities which are described as pledged under the General and Refunding Mortgage, then a list of unpledged securities, and then a list of other investments.

Mr. Curry, are you able to say from your knowledge of the records of the railroad company that the list of securities appearing under the heading "Pledged under the first mortgage", and the list headed "Pledged under the General and Refunding Mortgage", are correct as indicating the securities actually pledged?

A. To the best of my knowledge and belief, yes. This annual report is prepared in our San Francisco headquarters.

Mr. Wood: I offer this in evidence.

Examiner Wilkinson: Do you want to offer the whole report, or do you just want to offer that schedule?

Mr. Wood: I think I will offer the whole report, since it may have some bearing.

Mr. Niçodemus: Did we not stipulate in at the first hearing the annual report of the carrier to the Interstate Commerce Commission, which has the same information? [2100]

The Witness: Yes, reported on form A to the Commission.

Examiner Wilkinson: That is what I thought.

The Witness: It has already been in their possession.

(Testimony of M. J. Curry.)

Mr. Nicodemus: I do not think we should reintroduce the same document.

Examiner Wilkinson: Did you hear Mr. Nicodemus say that? You understand that there is already a stipulation incorporating by reference the Debtor's annual report, which contains that same information to which you have referred? That is, I presume it is the same information. It is the same character of information.

The Witness: Yes.

Mr. Nicodemus: Except it is more in detail, that is all.

The Witness: That is true. I say that statement is correct.

Mr. Wood: That is satisfactory.

The Witness: It is the report on Form A to this Commission, which is more in detail than this published report.

Mr. Wood: But it contains the same list of securities?

The Witness: It contains the same list of securities to the best of my knowledge, yes.

Mr. Nicodemus: You adopt that list as an accurate statement of the securities pledged under that mortgage?

The Witness: As an accurate statement of the facts.

Mr. Wood: I withdraw that exhibit, then.

[2101]

Mr. Swaine, unless you have objection, I think I will prefer to withhold the other evidence until

(Testimony of M. J. Curry.)

we have heard from the General and Refunding Mortgage bondholders.

Mr. Swaine: I think we should go ahead. I think it is part of the affirmative case to show what the lien is.

Q. (By Mr. Wood) Mr. Curry, will you please produce from the railroad company's files the application to the Interstate Commerce Commission for authority to construct the Northern California Extension? That is dated about February 14, 1929.

Mr. Nicodemus: In that connection, Mr. Examiner, request was made on the Debtor late last week for a large number of documents. Mr. Curry is in a position to produce one of each document, but we have not had an opportunity to have them reproduced.

The Witness: They were taken from the files.

Mr. Nicodemus: They are the file copies. I do not want to introduce them or have Mr. Curry introduce them and surrender dominion over them, because they are the only ones we have.

(Discussion off the record.)

The Witness: In that connection I feel that I should say, too, that with the short space of time given us to assemble this—we did not get it until about 4 o'clock Friday afternoon, and Saturday we spent assembling it—I have [2102] not had an opportunity to examine these papers to see if they are absolutely the correct papers that were asked to be produced at this hearing. Some of them are, but as to all of them I cannot say at this time.

(Testimony of M. J. Curry.)

Examiner Wilkinson: If the statement would be made here identifying the papers that are to be produced, then we will have something in the record as the basis for the introduction of them later on.

The Witness: That is all right; I understand.

(Discussion off the record.)

Mr. Wood: I am requesting Mr. Curry to produce this application to the Interstate Commerce Commission. It is headed,

"In the Matter of Application of the Western Pacific Railroad Company under Paragraphs 18 to 21, Inclusive, of Section 1 of the Interstate Commerce Act for a Certificate of Public Convenience and Necessity for the Construction and/or Acquisition of a New Line of Railroad in the Counties of Plumas, Lassen, and Modoc, California."

That was the original application relating to the Northern California Extension. It is dated February 8, 1929, signed in the name of the railroad company by H. M. Adams, president, and verified by him.

Mr. Swaine: I want to say that if there is any objection on the part of any party here to putting in that copy on [2103] the ground that it is not the best evidence, I want to insist on the original document being put in evidence. Therefore, as a condition to the substitution of copies, I would like a waiver on the record from all the other parties of the best evidence rule.

Mr. Coulson: I do not think that is likely to be

(Testimony of M. J. Curry.)

inserted on behalf of the client I represent, because this hearing here has been conducted like all hearings on the basis of putting in copies of different schedules.

Mr. Wood: Mr. Curry, would you please produce the answer of the railroad company to the questionnaire which the Interstate Commerce Commission sent out after this application was filed in connection with the Northern California Extension financing?

The Witness: Finance Docket No. 7440, "In the Matter of Application of the Western Pacific Railroad Company under Paragraphs 18 to 21, Inclusive, of Section 1 of the Interstate Commerce Act for a Certificate of Public Convenience and Necessity for the Construction and/or Acquisition of a new line of railroad in the Counties of Plumas, Lassen, and Modoc, California."

Return to the questionnaire is herewith presented.

Mr. Nicodemus: It is a big order to reproduce some of these things.

The Witness: Yes, it is. [2104]

Mr. Nicodemus: Would it be sufficient for your purposes to put in the pertinent extracts from these documents that you wish, or do you have to have the whole document?

Mr. Wood: I think in most cases we would like the whole document.

Mr. Nicodemus: That covers a big territory, that one there (indicating).

(Testimony of M. J. Curry.)

Mr. Wood: It might be that by going over them we could eliminate some of the parts.

The Witness: This bears date of September 11, 1929.

(Discussion off the record.)

Mr. Wood: This document is one of the documents that we are asking Mr. Curry to produce. I think he has already described it. It is the return of the railroad company to the questionnaire in Finance Docket No. 7440.

Q. Mr. Curry, will you please produce a letter from A. C. James Company to the Western Pacific Railroad Company dated May 14, 1929?

A. I have here a copy of such a letter.

Q. You identify the original, Mr. Curry?

A. The original is in our files in New York. We brought this copy along.

Q. Are you prepared to testify that that is a true copy of the original? [2105]

A. A true copy; I am, yes.

Mr. Wood: Is there any objection to putting that in as an exhibit without putting in the original?

Examiner Wilkinson: There is no objection on the part of the Commission if there is no objection on the part of the parties here.

Mr. Wood: I am asking whether the parties are objecting.

This is a letter dated May 14, 1929; A. C. James Company, signed by W. W. Carman, treasurer, and

(Testimony of M. J. Curry.)

it refers to the proposed Northern Extension from your main line at a point near Paxton or Keddie to connect with a line to be built by the Great Northern Railway Company from Klamath Falls southerly, for which extension application was made to the Interstate Commerce Commission under date of February 8, 1929.

"In the event your application for a certificate of public convenience and necessity is granted by the Interstate Commerce Commission, this company is prepared to advance to you, from time to time, as requested by you, all moneys required for the construction of the proposed Northern Extension."

Then follow details as to securities to be issued, then this statement,

"In view of the fact that Mr. A. C. James, a director [2106] of your company, is substantially interested in this company, we are advised that this offer on our part necessarily takes the form of an offer to bid at par for the securities mentioned above upon a public sale."

This statement appears after describing the securities that are to be issued:

"Said bonds or notes are to be secured by a trust indenture creating a first lien upon the proposed Northern Extension as security for said bonds or notes."

Q. Mr. Curry, was that financing done on the basis indicated in this letter?

A. It is my recollection that it was not. A sub-

(Testimony of M. J. Curry.)

sequent letter was delivered by the A. C. James Co. modifying that proposal.

Mr. Wood: I wish to offer this copy in evidence as an exhibit.

Mr. Coulson: I of course object to that since it is obvious that it refers to the arrangement which was not made effective. If it could have any significance in this proceeding it would be solely as an admission against interest on the part of A. C. James Company. It does not seem to me we have any issue here which makes it competent or relevant on any such point at the present time.

Mr. Wood: Mr. Examiner, I am offering this because it does have a bearing in interpreting the terms of the later [2107] offer which I am going to ask Mr. Curry to produce. The part that I read I think is quite significant when it is read with the terms of the later offer:

Mr. Swaine: To be specific, we understand that it is now contended that because the A. C. James Company furnished five million dollars that went with five million dollars of money provided by the proceeds of the first mortgage bonds, they got some kind of a pari passu lien upon the Northern California Extension. The purpose of this letter is to show that they started out, that is, the A. C. James Company, with the express intention of having a lien upon the Northern California lines. Now, as Mr. Curry has testified, that transaction was abandoned, and the next letter—I assume it is the next

(Testimony of M. J. Curry.)

one Mr. Wood is *call* for—will show the changed transaction. This letter is of evidentiary value in showing the intent to abandon the lien upon the property. In other words, they started out asking a lien and now come to a second letter which does not mention a lien. Our point is that by the two letters it is perfectly clear that it was not the intention of A. C. James Company to take a lien in respect of its five million dollar advance, but to take a junior position.

Mr. Coulson: If your Honor please, the necessary basis for the admission of such correspondence is an admission [2108] that the documents which set out the relative liens of the parties are ambiguous. Otherwise, this collateral evidence by prior correspondence as to incompletely completed transactions cannot have any significance.

If counsel for the mortgage bond trustee and counsel for the Committee of Institutional Bondholders are prepared to concede that on the documentary record there is ambiguity as to the relative liens of the various creditors here as to the Northern Extension, I am quite prepared to see all correspondence go in and see it fully supplemented. But I do not think we have reached that point yet.

As a matter of fact, I find it quite hard to see that all of this is not just for the present tilting at windmills. We have before the Commission the record as to liens of the first mortgage bondholders. The first mortgage has been filed. The General and

(Testimony of M. J. Curry.)

Refunding Mortgage has been filed. We have on the record the application of the funds secured from each series. I think the Commission already has before it all the factual data it needs on which any of us can array in a brief, if we desire, contentions that can be taken into account by the Commission in determining what is a fair and reasonable plan as to all the creditors and security holders in the property. [2109]

I think this building up of data that may or may not be interesting some day to a court if this property is not reorganized under Section 77 is quite unsound. It will create a record, if we follow this practice, which will be quite unworkable if the parties do not ultimately by a two-thirds vote of each class of creditor and security holder arrive at an agreement here. Our record will be quite unworkable if we are going to meet each contention that may come up in the course of the proceeding now by piling in a lot of documents which can hardly serve a useful purpose for the Commission's consideration.

Mr. Swaine: Mr. Examiner, the state of the record is this:

The first mortgage is in the record. Its granting clauses describe only the line as it existed before the building of the Northern California Extension. It has an after-acquired clause dealing with extensions. It has also a clause in the granting clauses covering property any part of which is constructed with the proceeds of the first mortgage bonds.

(Testimony of M. J. Curry.)

There is no evidence in the record at the present time as to the taking down of money under the first mortgage or the bonds under the first mortgage for the building of this line. There is not even any evidence in the record showing the precise time at which the Northern [2110] California line was built. Then the record contains the General and Refunding Mortgage, and the record shows it was executed on February 29, 1932. It in its granting clauses expressly describes the Northern California Extension.

I say that it is perfectly clear that that record is inadequate and that the first mortgage trustee on that state of the record, when the only thing that is here as to the first lien of the first mortgage on the Northern California Extension is Mr. Elsey's statement that it was a first lien, and in the light of the dispute that has arisen—it is perfectly clear that dispute is here—should go ahead and establish the facts as to the time that extension was built and the facts as to the taking down of the money under the first mortgage, so as to bring it within that clause.

Now, that is not an ambiguity. It is simply demonstrating that this property was within the after-acquired clause of the first mortgage. It is not a fact that has to be put in in order to tie up the complete story.

Mr. Clay: Mr. Examiner, may I make a suggestion, that the record might be shortened if the first

(Testimony of M. J. Curry.)

mortgage trustee merely put in the supplemental indenture subjecting the California extension to the first mortgage?

Mr. Swaine: There is no supplemental indenture and none [2111] was necessary. The Board of Directors of the Railroad Company adopted a resolution to the effect that this was subject to the first mortgage, and the first mortgage trustee, as I understand it, is proving that it is within the after-acquired clause without a supplemental indenture. It would have been merely a matter of further assurance.

Mr. Clay: That is a matter of a question of law.

Mr. Swaine: That is a question of law, yes.

Mr. Coulson: Conceding the full force of what Mr. Swaine says, Mr. Examiner, it leaves us, to seems to me, with the Commission in a position of needing for this record only two facts of testimony, one, if it be true that this record does not show when the money was taken down under the first mortgage, and applied to the Northern Extension and the amounts thereof, as it does to the application of the money of the so-called junior creditors to the Northern Extension;—if this record is incomplete as to the application of money, then that is a fact and a fact of the type the Commission properly takes into account.

If it is also a fact, conceded, but we might perhaps show it on the record by the testimony of this witness, that there was no supplemental indenture

(Testimony of M. J. Curry.)

subordinating the Northern Extension to the lien of the first mortgage [2112] by express language, then all this other testimony is utterly unimportant to the Commission at this stage of the proceeding. It might be important in a foreclosure proceeding if the property is not reorganized, but is utterly unimportant now, and could only be admissible, if we are going to apply any rules of evidence at this proceeding, if it be conceded that the indentures are ambiguous as to the lien on the Northern Extension.

On the basis of that concession I would withdraw any objection to the admissibility of these data. Otherwise, I object strongly to the admissibility of anything further than the two items I have referred to.

Examiner Wilkinson: It seems to the Examiner that the question has been raised of record here—

Mr. Coulson: Only by Mr. Swaine.

Examiner Wilkinson: —as to the conflict between the first mortgage and the General and Refunding Mortgage as a question of priorities. As much as the Commission would be loath to attempt to pass on that, under Section 77, the question of priorities, a plan cannot be approved unless those priorities are in accordance with the law. The issue is before us, and since it is here we want to get all the evidence in the record that we can that would help the Commission to decide that question, if it ultimately has to decide it, as it looks as if it is going to, on the [2113] state of this record.

(Testimony of M. J. Curry.)

I might make a statement here, that there is a question as to whether there is a supplemental indenture or not.

Mr. Swaine: No, there is no question.

Examiner Wilkinson: It was my understanding that all of the indentures concerning this property were in the record. At least, we asked for that.

Mr. Nicodemus, do we have all the indentures here concerning this property?

Mr. Nicodemus: So far as I am aware, everything has been introduced.

Mr. Coulson: I suggest that question be asked of the witness, Mr. Examiner.

Examiner Wilkinson: All right. Mr. Curry, are you aware of any additional debenture which has not been placed in this record, assuming that you know what has been placed in this record?

The Witness: According to my recollection they have all been introduced, all indentures, with the possible exception, perhaps, of the issuance of five million dollars of indentures. Whether that is in the record or not I do not recall at this moment.

Mr. Clay: According to your best recollection, there are no supplemental indentures to the first mortgage? [2144]

The Witness: According to my best recollection there was no supplemental indenture to the first mortgage.

Mr. Clay: Indentures, plural.

The Witness: Indenture or indentures, yes.

(Testimony of M. J. Curry.)

Mr. Nicodemus: My understanding is the indenture mortgage has been released and discharged.

The Witness: Yes.

Mr. Wood: Not formally released. The indenture was retired, but I think there was no formal satisfaction executed.

The Witness: I do not recall that.

Mr. Coulson: Mr. Curry, would you recollect if a supplemental indenture had been drawn subjecting the Northern Extension by direct language to the lien of the first mortgage?

The Witness: I would recollect that, yes, sir.

Mr. Coulson: And there has been to your knowledge no such supplemental indenture drawn?

The Witness: There has not.

Mr. Coulson: Or executed?

The Witness: That is right; they have not.

Mr. Swaine: Mr. Examiner, that affords the most full basis for going into the whole question of whether or not that fell within the after acquired clause. It also raises the question as to whether when it came in under the after- [2115] acquired clause it came in subject to anybody's vendor's lien. The purpose of this letter was to show that the A. C. James Company initially intended to get a vendor's lien, and the purpose of the next letter would be to show that it abandoned the vendor's lien and allowed the property to go into the first mortgage instead. So there is no question of ambiguity. It is purely a question of whether it fell

(Testimony of M. J. Curry.)

within the after-acquired clause, and if so, whether it came in subject to a vendor's lien.

Examiner Wilkinson: The letter will be received.

Mr. Coulson: Subject to the objection I have stated?

Examiner Wilkinson: Subject to the objection, yes.

You have only this one copy?

The Witness: Yes.

Examiner Wilkinson: That will go into the record and you will get the extra copies here for counsel and for the Commission.

Mr. Wood, you will supply sufficient copies?

Mr. Wood: Mr. Curry, can you do that, please?

The Witness: I will undertake to do that, yes, sir.

Examiner Wilkinson: The letter of May 14, 1929, just referred to, will be received as Exhibit No. 45.

(Exhibit No. 45, Witness Curry, received in evidence.)

Q. (By Mr. Wood) Mr. Curry, will you please produce the amended application of the railroad company to the Inter-[2116] state Commerce Commission for authority to construct the Northern California Extension, that was dated about August 1; 1929?

A. I find in my papers here a copy of application in Finance Docket No. 7440 for amendment.

(Testimony of M. J. Curry.)

of certificate of public convenience and necessity granted under date of June 9, 1930, such amendment being necessary to permit of joint use of Southern Pacific Company's line 5.27 miles northward from Westwood.

Q. That does not relate to the Northern California Extension, I take it?

A. 7440 is the docket number on the Northern California Extension, is it not?

Q. I believe that is right, but the description you have just read of the line does not seem to correspond with the—

A. Well, it is part of that proposal.

Q. Oh, it is part of the same proposal?

A. It is part of the same construction, as I understand it.

Q. Pardon me. Does this involve a change in the method of financing the new extension, this one that you are reading?

A. I cannot answer that. I do not know. I have not read it. [2117]

Mr. Nicodemus: I think this is germane. This relates to a certain part of the Northern Extension that was not constructed, and trackage substituted. I am not sure that is what you asked for.

The Witness: As I say, I did not have time to go carefully through the papers. There may be some things here that you asked for that are not complete. I cannot complete them until I have an opportunity to search the records and see.

(Testimony of M. J. Curry.)

Q. (By Mr. Wood) Mr. Curry, the application that I am asking for is an amendment to the first application, which involves a change in the route and a change of the method of financing the Northern California Extension. It was an amended application asking for authority to construct the line and finance in a different way.

A. I regret I seem to have no such document with me.

Q. Filed with the Commission, I think, on August 12, 1929. A. August 12, 1929?

Q. Will you produce that from your files later, Mr. Curry, if you can locate it? A. I will.

Q. Mr. Curry: will you please produce a letter from the A. C. James Company to the Western Pacific Railroad Company dated June 19, 1929? That is the letter which contains [2118] the new offer in connection with the financing of the Northern California Extension.

A. I submit copy of such letter.

Q. You have the original in your files?

A. I have the original in my files.

Q. Is that a true copy?

A. This is a true copy, yes.

Mr. Nicodemus: Dated what?

The Witness: Dated June 19, 1929, signed by the A. C. James Company, by E. H. Ferry, vice president.

Mr. Wood: Mr. Examiner, this letter is a revision of the previous offer made by the A. C. James Com-

(Testimony of M. J. Curry.)

pany in connection with the financing of the Northern California Extension, and it states that 50 per cent of the money up to five million dollars is to be advanced against the debentures which were later issued. This letter says nothing about a first lien being given to the A. C. James Company for the money that it advanced. It states:

"It is further understood that this offer is in lieu of and in substitution for our offer of May 14, 1929, which contemplated the issue to us of bonds or notes secured by a first lien on the Northern Extension as then proposed and described in the original application for a certificate of public convenience and necessity filed February 8, 1929." [2119]

I would like to offer this in evidence.

Examiner Wilkinson: Letter of June 19, 1929, just referred to by counsel, will be received by Exhibit No. 46.

(**Exhibit No. 46, Witness Curry, received in evidence.**)

The Witness: I will see that copies are furnished to all interested counsel.

Q. (By Mr. Wood) Mr. Curry, will you please produce the application of the railroad company to the Interstate Commerce Commission dated October 28, 1930, for authority to issue and sell the five million dollars of debentures?

A. I submit copy of such application in the matter of the Western Pacific Railroad Company for authority to issue securities, five million dollars

(Testimony of M. J. Curry.)

of 5 per cent gold debentures, dated October 28, 1930, which contains as an exhibit copy of the indenture referred to.

Mr. Nicodemus: This is your file copy, is it?

The Witness: That is my file copy.

Mr. Nicodemus: You have no copies available for distribution?

The Witness: No.

Mr. Wood: This is one of the documents which we are asking be produced subject to the understanding that you will produce it later and it will be offered as an exhibit when you have copies.

I wish to call attention to Exhibit VII in this application, which is an extract from the minutes of the Executive Committee of the railroad company at the meeting on Wednesday, June 19, 1929:

"The chairman called attention to the fact that at the May 14 meeting of the Executive Committee, a letter was submitted from the A. C. James Company offering to finance the cost of constructing the proposed new line of railroad to extend from this Company's main line at or near Paxton, or Keddie, Plumas County, California, to a connection with the line of the Great Northern Railway at Lookout, California, through the purchase of notes or bonds of the company secured by a first mortgage on such new line, and that such proposal was accepted by the Committee.

"The Chairman then stated that the negotiations

(Testimony of M. J. Curry.)

between this Company and the A. C. James Company leading up to the proposal by the A. C. James Co. were based upon the understanding on both sides that the proposed new line could be constructed for approximately \$5,000,000; but that it now developed that if the route proposed in the Company's application to the Interstate Commerce Commission for permission to build the new line is followed the cost will be very greatly in excess of \$5,000,000. The Chairman also stated that a study was now being made to adopt a somewhat different route with the view to greatly reducing the estimated cost and that if it seemed desirable to adopt a different location it would be necessary for the Company to amend such pending application to the Interstate Commerce Commission.

"The Chairman said that in view of these facts the A. C. James Co. very properly desire to modify their previous offer, and to that end had written a letter reading as follows:

Then follows the letter of June 19, 1929, which has already been offered.

"The letter of June 19, 1929, from the A. C. James Co. was then discussed, and thereupon the following resolution was adopted, Mr. A. C. James not voting:

"Resolved, That the offer of the A. C. James Co. set forth in their letter of June 19, 1929, submitted at this meeting to purchase, under certain conditions, up to \$5,000,000 principal amount of the 5 per

(Testimony of M. J. Curry.)

cent debenture of this company be and the same is hereby approved, and the Chairman is authorized to advise the A. C. James Co. of the acceptance by this company of such offer.

"Further Resolved that the offer so made by the A. C. James Co. to this Company dated June 19, 1929, presented at this meeting, be accepted in place of the offer of the A. C. James Co. contained in its letter of May 14, 1929, and submitted to the Executive Committee of this [2122] Company at its meeting on May 14, 1929."

Then follows a resolution directing the amendment of the reply to the questionnaire of the Commission, which I shall not read.

Q. Mr. Curry, you certified these resolutions in this application. Can you say who were present at the meeting of that Executive Committee?

A. What was the date, please?

Q. The date of the meeting is Wednesday, June 19, 1929.

A. I cannot at this time. It was not listed in your memo as being information you desired at this hearing. The minute books are in New York. I cannot answer that question.

Q. Will you supply that, please, Mr. Curry?

A. I will, yes.

Q. In the portion of the minute which I read it is stated, "Mr. A. C. James not voting." Mr. James was a director of the Western Pacific at that time?

A. Yes.

(Testimony of M. J. Curry.)

Q. And a member of the Executive Committee?

A. Yes.

Mr. Nicodemus: He must have been present, must he not?

The Witness: He was present, but not voting.

Mr. Nicodemus: That is all you want to know, whether he was present? [2123]

The Witness: He would not be listed as present.

Mr. Wood: I think that answers my question, yes.

I offer in evidence a certified copy of the order of the Interstate Commerce Commission in Finance Docket No. 8548, which is a report and order entered November 20, 1930, authorizing the issue of the five million dollars principal amount of debentures:

Examiner Wilkinson: Is this the order to which Mr. Clay has been referring?

Mr. Homire: One of them, yes.

Mr. Swaine: I do not think it is the one.

Mr. Homire: He may not have referred to it yet, but he would refer to it later if it was brought up.

Mr. Swaine: This is one of a series of orders.

Examiner Wilkinson: Is there any objection to the receipt of this order?

Mr. Coulson: Except the objection that I made to the receipt of this material of course applies to all this data, that it is hardly relevant unless we have the basis for it also by showing that there is ambiguity in the documents before the Commission. That is the only objection to the receipt of any of this material.

(Testimony of M. J. Curry.)

Examiner Wilkinson: Objection over-ruled. The document will be received as Exhibit No. 47.

(Exhibit No. 47, Witness Curry, received in evidence.) [2124]

Q. (By Mr. Wood) Will you next produce an affidavit which you made under date of March 2, 1931, having attached copy of the published notice calling for bids, copy of the specifications, and copy of the formal bid on the proposed issue?

A. I submit affidavit of mine re bids for five million dollars 5 per cent gold debentures of the Western Pacific Railroad Company, dated March 2, 1931, with copy of notice and copy of specifications of securities offered for sale, No. 2935, dated January 7, 1931.

This happens to be an extra copy and can be offered:

Mr. Wood: I will offer it in evidence, if your Honor please.

This has a notice attached to it requesting bids for the five million dollars principal amount of the debentures and also this notice was published in the New York Times on January 8 and 9 and 15th and 16th, 1931.

Under the specifications of the securities offered for sale I would like to call attention to certain provisions in these specifications.

These specifications state, among other things, that

(Testimony of M. J. Curry.)

"The main line of railroad of the Company extends from San Francisco, California to Salt Lake City, Utah with branchés, and aggregates 1050.5 miles, more or less, [2125] of first track. Upon the completion of the Company's 'Northern California Extension' its main line of railroad will aggregate 1198.5 miles, more or less. A map of the ~~Company~~'s railroad system is hereto annexed."

Then it states; "The first mortgage of this company dated June 26, 1916, securing this Company's first mortgage bonds, whereunder not more than \$50,000,000 thereof may be outstanding at any one time, is a first lien on said main line of railroad."

You will notice that the main line is described as including the extension when the extension is completed.

Then follows the bid:

The Witness: The bid is not included with those papers.

Mr. Wood: That is right.

Q. I ask you, Mr. Curry, to produce the bid of the A. C. James Company, dated January 22, 1931.

A. It is submitted. That is an extra copy, a true copy of the bid.

Mr. Wood: I will offer this in evidence.

Examiner Wilkinson: Just a moment. As to the other document you had right before that—

Mr. Swaine: That was the published notice calling for bids, prescribing the securities.

Examiner Wilkinson: —do you want to put that physically into the record? [2126]

(Testimony of M. J. Curry.)

Mr. Wood: I understand these are extra copies. I will offer them in evidence.

Mr. Coulson: I would like to register an objection to this putting in of published notices in an attempt to prove that the Northern Extension is a part of the main line by a characterization of the Northern Extension as such. At best it could be but an admission as against the Debtor company. I fail to see its propriety in a proceeding as factual data on which the Commission could base a judgment, even if it ever needed to base a judgment on this technical law point that Mr. Swaine is tilting at.

Mr. Swaine: The notice described the securities on which the A. C. James Company was to bid. That was the notice pursuant to which they bid, and their bid refers to the notice, so that you have to have the notice in order to describe the things that they were bidding on.

Examiner Wilkinson: The objection is overruled and the statement, consisting of five sheets, will be received as Exhibit No. 48.

(Ex. No. 48. Witness Curry, received in evidence.)

Mr. Coulson: May the record show an exception?

Examiner Wilkinson: Yes.

Q. (By Mr. Wood) Have you a copy of the map that is annexed to the specifications?

A. I can furnish that later. I do not have it with me. [2127]

Q. I think to make the exhibit complete we ought to do that. A. All right.

(Testimony of M. J. Curry.)

Mr. Wood: I now offer in evidence the bid of the A. C. James Company, dated January 22, 1931. I would like to read it in part:

"In accordance with and subject to all the terms of the notice dated January 8, 1931, published by your Company in newspapers of New York and San Francisco, and in accordance with the specifications referred to in said notice, which notice and specifications have been examined by the undersigned, the price of \$5,000,000, 100 per centum of the face amount thereof and accrued interest to the date of delivery is hereby bid by the undersigned for the five million dollar face amount of 5 per cent. gold debentures of your company offered for sale."

Then follows a list of the names and addresses of the officers, directors, and general manager, and the purchasing officer or agent of the A. C. James Company, including Arthur Curtiss James, president and director.

Examiner Wilkinson: Any objection?

Mr. Coulson: I take it, Mr. Examiner, I have a running objection to this line of testimony?

Examiner Wilkinson: Yes.

The bid dated January 22, 1931 will be received as [2128] Exhibit No. 49.

(Exhibit No. 49; Witness Curry, received in evidence.)

Mr. Wood: I offer in evidence copy of the debenture agreement under which the five million dollars of debentures were issued.

(Testimony of M. J. Curry.)

Mr. Coulson: I think that statement ought to be corrected to some extent. There were not five million dollars of debentures issued, and I think the record already shows what debentures were issued.

Mr. Wood: I am willing to have my statement corrected to the extent that the debentures were actually issued.

Mr. Coulson: Yes. Just so there cannot be any misapprehension, there were not five million dollars. A part of the advance of the A. C. James Company was, as I think the record shows, made under the terms of the debenture agreement, and part, the final part, something like half a million dollars, was made under the secured notes, secured by the General and Refunding Mortgage.

Mr. Swaine: No, I think you are mistaken. I think it was \$200.

Mr. Coulson: No.

Mr. Swaine: Let us get the facts.

Mr. Wood: I think what took place was this, Mr. Coulson:

After the General and Refunding Mortgage was executed [2129] or at the time that was executed, all the outstanding debentures, some four million and a half dollars, were cancelled in order not to violate the covenant in the debenture agreement against placing a mortgage on the property of the railroad company. Then there were two subsequent take-downs of debentures. I believe that the procedure was the debentures were authenticated and de-

(*Testimony of M. J. Curry.*)

livered, stamped with a legend, and immediately exchanged for a note secured by the General and Refunding Mortgage bonds, and they were cancelled and re-delivered to the trustee.

Mr. Coulson: Your record as you are making it here shows that as a simultaneous transaction. I did not recollect, if I ever knew, about this technical issue of debentures for the last half million, so I would be glad if your record is complete as to that.

I dare say, Mr. Examiner, we will have a chance to complete this record if upon examining this lengthy mass of documents we see that there are omissions or lacuna of any sort in it.

Mr. Wood: On that point, Mr. Coulson, I am not putting in documentary evidence, I am merely stating what my understanding is of what took place. The files of the first mortgage trustee of course do not contain it.

Examiner Wilkinson: I do not understand. You say you [2130] are not putting in documentary evidence. What do you call this that has been going in?

Mr. Wood: I mean as to this statement of what happened on the debentures.

Mr. Coulson: But if that statement is to be taken as evidence by the Commission we ought to have it documented.

Mr. Swaine: I think it would be well if we had all the documents. I agree with Mr. Coulson that we want all the documents. I would be very happy to

(Testimony of M. J. Curry.)

have the debenture trustee produce all the documents.

Examiner Wilkinson. It is taken for granted that the Commission wants a complete record. That is what we want.

Mr. Coulson: It has been my impression, Mr. Examiner, and I think the record to this date shows it, that only a part of the moneys advanced for the Northern Extension by the A. C. James Company were advanced under this debenture agreement, and that so far as the balance of those amounts, which I understood were something like half a million dollars, were concerned, they were advanced under the secured notes.

If that is not the case let us have the full facts, and also the full facts as to the moneys advanced by the Reconstruction Finance Corporation for the Northern Extension, which were clearly advanced under the secured notes [2131] and secured by the General and Refunding Mortgage bonds.

Mr. Wood: Mr. Coulson, I believe the A. C. James Company took all of the debentures. Is that right?

Mr. Coulson: All that were issued; not the whole five million dollars, as I understood it, but that seems to be an issue here. Nobody else took any.

Mr. Wood: What I was getting at was this:

The Chase National Bank of course was trustee under the debenture agreement, but I was considering the propriety of their producing the files from

(Testimony of M. J. Curry.)

another trust. But since your client held all of the debentures, if you are willing, I think there is no objection to our putting all of that in. We have them here.

Mr. Coulson: Before we get through, if we are going to conduct this lengthy excursion into the question of whether the after-acquired property clause is ambiguous, I think the Chase Bank in its many capacities of trustees under all the situations ought not only to put in the documents which Mr. Swaine as counsel for the Institutional Bondholders' Committee thinks it ought to put in, to support the first mortgage bondholders' position, but I think it ought to be prepared to come in in its capacity as trustee in this emergency as a resigning but unresigned trustee of the General and Refunding Mortgage, and put in the documents that bear on the lien of that mortgage, and then [2132] go a step further, if we are still dealing with an ambiguity here, and put in the documents that bear on what part of the various moneys were advanced under this debenture agreement that has been tendered and what part under the subsequent secured notes, as to the Northern Extension.

Mr. Swaine: I think that is fine. I think the Reconstruction Finance Corporation and the Railroad Credit Corporation will join in it. Then the Chase will be relieved of any embarrassment and can put the entire documentary record in in all three capacities.

(Testimony of M. J. Curry.)

Mr. Clay: May I make one suggestion? The Chase in its capacities as trustee of the first mortgage and as trustee of the General and Refunding Mortgage ought to be represented by different counsel.

Mr. Swaine: I understand that all it is doing under that set-up would be to produce the documents.

Mr. Clay: There ought to be somebody represent the general mortgage bondholders, to see that the Chase does put in all the documents.

Mr. Swaine: You three that represent the general mortgage bondholders—

Mr. Wood: I should prefer not to put in any of those documents myself. Incidentally, we did not bring anything under the General and Refunding mortgage with us. We have the debenture files, and if Mr. Coulson wants to put them [2133] in, I am perfectly satisfied to let them go in.

Mr. Coulson: The point I make is this, and I do not want to be misunderstood:

We cannot relieve the Chase from the embarrassments which it gets ~~from~~ acting as trustee under these successive agreements. If there is embarrassment it exists. If at a later stage of the proceeding, I as representing a first mortgage bondholder might complain because the Chase did not have a supplemental indenture executed, I would have a right to complain. In my capacity as representing a junior creditor, if the Chase has been delinquent in any respect I might have a right to complain. But the im-

(Testimony of M. J. Curry.)

portant thing is here that the Chase in limiting its functions narrowly to presenting the documents which Mr. Swaine wishes in defense of an issue which has not yet been pressed by other parties in this proceeding, but is only aimed at sustaining his statement made not only in his plan but repeatedly in the record and in his whole theory of this proceeding, that the first mortgage bondholders are superior in all respects to all other creditors except possibly the equipment trust—I do not think he has put them behind the first mortgage,—but if this is going in, I think of course we ought to have these other records from the files of the Chase in its other capacities. [2134]

Mr. Swaine: We will be very happy to have them in.

Mr. Wood: Mr. Coulson, so far as the Chase is concerned, of course the General Refunding mortgage bondholders are entitled to call on it to introduce any of those documents to support whatever evidence you want to go in, and we will be glad to do it. We do not happen to have them here at this time; but I do not feel that the Chase as trustee or myself as counsel should take the initiative in presenting the evidence, since we have resigned and are taking an inconsistent position under the first mortgage.

Mr. Swaine: That does not apply to the debenture agreement. There you are *funetus officio*. That is a transaction which is closed. As I understand

(Testimony of M. J. Curry.)

it, both Mr. Coulson and I are in agreement, for once, that we would like all the documents affecting the debentures put in the record.

Mr. Wood: We have those here, and we would be glad to put them in.

Mr. Swaine: Those are here?

Examiner Wilkins: As I understand this, Mr. Wood, this morning you withdrew your appearance as counsel for the General and Refunding Mortgage.

Mr. Wood: That is right.

Mr. Coulson: And those who hold the General and Refund- [2135] ing mortgage bonds as collateral are left without a trustee to speak for them in this proceeding at the present time.

Mr. Clay: And without access to any of the records.

Examiner Wilkinson: As far as the record shows, directly representing the trustee, that is correct.

Mr. Swaine: But all the holders are here represented by counsel.

Mr. Clay: I would like also to have the record show that the General mortgage bondholders have access to none of the records. They are at present in the possession of the Chase Bank.

Mr. Wood: You will have access to them in the sense that the Chase will produce them whenever it is called upon to do so. We did not anticipate they would be called for, and we did not bring them with us.

(Testimony of M. J. Curry.)

Mr. Clay: I would like to make the additional statement of an apparent fact, that the general mortgage bondholders are not represented at the present time by a mortgage trustee.

Mr. Wood: Of course, I suppose the trustee continues in office until its successor is appointed. You cannot just throw the trust out in the street.

Mr. Coulson: That is why we are embarrassed by your suggestion that you withdraw as counsel without any other [2136] counsel being appointed to represent the trustee, who is a resigning and not resigned trustee.

Mr. Swaine: Can we not go ahead with the first mortgage evidence and the debenture evidence? Those were contemporaneous transactions. If we can get that in, then we can decide what is going to happen about this subsequent mortgage that was executed in 1932, after all this had happened.

Examiner Wilkinson: The indenture dated July 1, 1930, the 5 per cent gold debentures, is received as Exhibit No. 50.

(Exhibit No. 50, Witness Curry, received in evidence.)

Examiner Wilkinson: We will take a recess for five minutes.

(Whereupon, a short recess was taken.)

Q. (By Mr. Wood) Mr. Curry, will you please produce the application of the railroad company to the Interstate Commerce Commission for authority to issue and sell five million dollars principal amount

(Testimony of M. J. Curry.)

of first mortgage bonds to be used for the construction of the Northern California Extension, dated about October 1, 1930?

A. Application dated September 9, 1930, in the matter of Western Pacific Railroad Company for authority to issue securities, five million dollars additional first mortgage 5 per cent bonds. [2137]

Q. That application states that they are to be used in connection with the Northern California Extension?

A. To use the proceeds therefrom in the payment and discharge of liabilities incurred by applicant for the reimbursement of its treasury for money expended by it with respect to the acquisition and/or construction by this company of its proposed so-called Northern California Extension, and so forth.

Q. That is one of the documents of which you have no copies at this time?

A. That is correct.

Q. And which we will offer as we are going to offer these other documents; at a later date?

Mr. Coulson: May I interrupt to ask this witness at this point, if you do not object, whether that application was in terms a reimbursement application or an ear-marking of the proceeds of these bonds for the Northern Extension?

Mr. Swaine: Just a minute.

The Witness: I cannot answer that without reading it.

(Testimony of M. J. Curry.)

Mr. Swaine: That calls for a conclusion. The document states itself, and for the information of Mr. Coulson, the trustee intends to prove that the bonds were deposited and were drawn down, and the papers in connection with their drawing down will be produced.

Mr. Coulson: I am only interested in getting for the [2138] Commission what seemed to me at the outset the only other pertinent item of information in this thing, and that is how the moneys were applied, in the form of a statement which will show to us how much money was realized on this five million dollars, how they were applied, and when they were applied.

If Mr. Swaine is going to put this in through the first mortgage trustee—

Mr. Swaine: The first mortgage trustee will put it in.

Mr. Coulson: — I will be glad to wait, but I do think the Commission ought to have a statement showing how these moneys were applied, when they were received, how much they were, and how they were applied.

Mr. Wood: That will all appear in the applications for taking down first mortgage bonds, and the cash proceeds.

Mr. Coulson: I do not think any application except a reimbursement application can show on its face that the application was made. I think we need a statement from the company.

(Testimony of M. J. Curry.)

Mr. Swaine: If you will be a little more patient and allow this to unfold, you will get those facts.

Mr. Coulson: I will be very glad to be patient until they are unfolded.

Thank you, Mr. Wood.

Examiner Wilkinson: You withdraw your question? [2139]

Mr. Coulson: Yes.

Mr. Wood: I now offer in evidence certified copy of the order of the Commission and the report entered October 6, 1930, Finance Docket No. 8473, which is the order authorizing the issue of five million dollars of first mortgage bonds. Incidentally, this states:

"The applicant proposes to use the proceeds from the bonds in payment of liabilities incurred and/or reimbursement of its treasury for money expended by it with respect to this construction and acquisition."

That is the Northern California Extension.

Examiner Wilkinson: Is there any objection? (No response.)

The report and order of the Commission dated October 6, 1930, will be received as Exhibit 51.

(Exhibit No. 51, Witness Curry, received in evidence.)

Mr. Coulson: Are we going to be furnished copies of these Commission orders?

Examiner Wilkinson: Not only copies of the orders, but every one of these exhibits.

(Testimony of M. J. Curry.)

Mr. Coulson: We have to study them, Mr. Examiner.

(Discussion off the record.)

Q. (By Mr. Wood) At this point, in order to finish with Mr. Curry, I am going to digress from the order a little bit and ask for the application of the railroad company to [2140] the Commission, dated about February 10, 1932, for a certificate authorizing a loan from the Reconstruction Finance Corporation.

A. I have that. It is application dated February 5, 1932, addressed to the Interstate Commerce Commission.

Q. Mr. Curry, is there a supplemental application dated February 13, 1932, that relates to that?

Mr. Clay: There is a supplemental application of February 13.

The Witness: I have not such an application with me. There may have been. I would have to look through my records.

Q. (By Mr. Wood) Will you make a note of that, please, Mr. Curry, and if there is, will you include that in the list of documents to be produced?

The next is an application some time late in 1931 for authority to issue and pledge General and Refunding Mortgage bonds as collateral security for notes to be issued to A. C. James Company and the Railroad Credit Corporation.

A. Of date February 11, 1932?

Q. I do not know the date.

(Testimony of M. J. Curry.)

A. I have here an application of the Western Pacific Railroad Company for authority to issue and pledge 15 million dollars of its General and Refunding Mortgage gold bonds, [2141] Series A, and to issue five million dollars of its notes.

Mr. Wood: That is one of the documents we will have to offer later.

I now offer in evidence a report and order of the Interstate Commerce Commission entered February 29, 1933, Finance Docket No. 9151, Western Pacific Railroad Company Reconstruction Loan, authorizing a loan from the Reconstruction Finance Corporation.

Mr. Clay: That is offered just merely as evidence of approval of the loan, not as evidence of the lien of the general mortgage bond?

Mr. Wood: Well, it is part of the picture.

Mr. Clay: I know, but that is a legal question. You are offering this merely to show—

Mr. Wood: Whatever bearing it has as a question of fact on the legal question that is involved.

Examiner Wilkinson: Is there any objection to this document?

(No response.)

The order and certificate of the Commission dated February 29, 1932, in Finance Docket 9151, are received as Exhibit 52.

(Exhibit No. 52, Witness Curry, received in evidence.)

(Testimony of M. J. Curry.)

Mr. Wood: I offer in evidence a certified copy of the report and order of the Commission entered February 27, [2142] 1932, Finance Docket No. 9162, authorizing the issue of not exceeding 15 million dollars General and Refunding Mortgage bonds and notes for not exceeding five million dollars.

Examiner Wilkinson: The document just referred to will be received as Exhibit No. 53.

(Exhibit No. 53, Witness Curry, received in evidence.)

Mr. Wood: Mr. Curry, will you please produce the annual reports of the Western Pacific Railroad Company for 1930 to 1934, inclusive?

(Discussion off the record.)

The Witness: I have them, and submit them from 1930 to 1935, inclusive.

Mr. Wood: I will offer them in evidence. You have no objection to putting those in now, Mr. Curry?

Examiner Wilkinson: Is there any objection to the receipt of these documents?

Mr. Coulson: Aside from my running objection there is none.

Examiner Wilkinson: The annual report of the Debtor for the calendar year ended December 31, 1930, is received as Exhibit 54.

The 1931 annual report is received as Exhibit 55.

The 1932 annual report is received as Exhibit 56.

The 1933 annual report is received as Exhibit 57.

[2143]

The 1934 annual report is received as Exhibit 58.

The 1935 annual report is received as Exhibit 59.

(Testimony of M. J. Curry.)

(Exhibits 54 to 59, inclusive, Witness Curry, received in evidence.)

Q. (By Mr. Wood) Will you please produce the minutes of a meeting of the Executive Committee of the railroad company for February 11, 1931?

A. These are extracts from my permanent minute book. They are not copies.

Q. Does that volume contain all of these minutes? A. All of those that you asked for.

Q. I might mention then at this time I am calling for the minutes of the Executive Committee meeting on February 11, June 25, July 23, October 15, November 17, and December 21 of 1931, and January 29, 1932. A. Yes.

Mr. Nicodemus: Do you want the entire records for those dates, or only so far as they pertain to this financing?

Mr. Wood: Only so far as they pertain to the Northern California Extension.

Q. Do you have extra copies of those, Mr. Curry, so that we can offer them now?

A. I have not, no. These are the originals from the permanent book that I brought with me. I have no copies.

Mr. Wood: Mr. Examiner, I want to be clear as to what [2144] the procedure will be about offering these documents later in evidence. In case we do not have another session is it understood that when the copies are ready we can put a copy in evidence

(Testimony of M. J. Curry.)

merely by notifying the Commission and filing the document, and sending the copies around to the other parties?

Examiner Wilkinson: As I understand, the purpose so far has been to identify on the record the data and the documents which you asked to be produced, for the purpose of having them presented as evidence in this case. If there is any objection to the data, with which all counsel here are familiar, having heard it, I would like the record to show it.

Mr. Coulson: I made clear, I think, at the start, Mr. Examiner, that I thought all of this was irrelevant to the issues immediately before us and should be considered only either as explaining an ambiguity in the record, which is already before the Commission, or as sustaining Mr. Swaine's rather sweeping claim in the plan which was filed with the Commission at the last hearing, that the first mortgage bondholders had a first lien on everything.

I understand he does not assert that claim in its complete form anyway, and I think all this amplification of the record as to the Northern Extension is unnecessary, and in that sense irrelevant to the issues we are immediate- [2145] ly dealing with. But I understand that that objection, having been made, was overruled and the Commission allowed me a running objection to all this. I do not want to be deemed to have withdrawn that objection, but aside from that I have no objection to the procedure suggested here.

(Testimony of M. J. Curry.)

Examiner Wilkinson: Are there any other objections?

I understand, Mr. Nicodemus, you undertake to produce through Mr. Curry the documents and ~~data~~ that Mr. Wood requested?

Mr. Nicodemus: What I think we will do is, we will take the originals over to the Chase Bank and let them photostat them in as many copies as they want; and transmit them. They are their exhibits, they are not ours.

Mr. Swaine: Oh, not all of that. These resolutions are your own.

Mr. Nicodemus: Oh, no, we closed our case.

Mr. Swaine: Oh, if you mean it that way, yes. I thought you meant they were the property of the Chase Bank.

Mr. Nicodemus: No.

Examiner Wilkinson: My understanding is you will supply that?

Mr. Nicodemus: Yes, we will undertake to get the documents. [2146]

(Discussion off the record.)

Q. (By Mr. Wood) Mr. Curry, in connection with those minutes which you have produced, will you state who were present at those meetings? Do your records show?

A. Yes, they do show,

At the meeting of February 11, 1931, there were present Messrs. Schumacher, Loasby and James, directors.

Mr. Coulson: May I interrupt for a moment?

(Testimony of M. J. Curry.)

It seems to me this is building up the record unnecessarily. If we put in these minutes which show who were present, and the witness says it shows it correctly, why should we read into the record the names of the directors present at the meeting?

Mr. Swaine: You are not putting in the minutes. It was agreed you would put in only the resolution affecting the Northern California.

Mr. Coulson: I did not understand that. If that is so, we certainly want an opportunity to examine these minutes and see if other material in the minutes ought to go in. I thought the working agreement was that we were putting in these documents that he presented.

Mr. Swaine: All that was presented was the excerpt affecting the minutes regarding the Northern Extension. That is all we asked for.

Mr. Coulson: I suggest the best evidence is the record [2147] itself.

Mr. Nicodemus: I was seeking to keep out of this record material which did not relate to this matter at all. There may have been other business at these meetings.

Mr. Wood: I am perfectly willing to have them confined to the minutes as they relate to the Northern California Extension, provided the record also shows what members of the committee were present. If you object to that, then I should ask for the entire minutes of each meeting.

(Testimony of M. J. Curry.)

Mr. Coulson: I do not object to it, Mr. Wood. It was only a desire to shorten this up and avoid duplication. But if you need a statement as to who were at the meeting, I have no objection to it.

Mr. Wood: That is all I wanted.

The Witness: I understand you want the complete attendance?

Mr. Taylor, of counsel.

Q. (By Mr. Wood) Just the members of the Executive Committee.

A. At the meeting June 25, 1931, present, Messrs. Schumacher, Aldrich, James, and Loasby.

At the meeting of July 23, 1931, there were present Messrs. Schumacher, James and Loasby.

At the meeting held October 15, 1931, present, Messrs. Schumacher, James and Loasby. [2148]

At the meeting held on November 17, 1931, Messrs. James, Schumacher, Loasby and Adams.

At the meeting held December 21, 1931, present, Messrs. Schumacher, James, Loasby and Shepard.

At the meeting held January 29, 1932, present Messrs. Schumacher, James and Shepard.

That completes the list.

Q. Mr. Curry, the Mr. James that is referred to in each case is Mr. A. C. James?

A. Mr. Arthur Curtiss James.

Mr. Coulson: And the Mr. Aldrich?

The Witness: Mr. Winthrop W. Aldrich.

Mr. Wood: I now offer in evidence a certificate of the Commission filed and entered June 23, 1932,

(Testimony of M. J. Curry,) and report and order of the Commission filed and entered February 25, 1933, in Finance Docket No. 9448, Western Pacific Railroad Company Reconstruction Loan.

Mr. Nicodemus: Do you have those as one exhibit?

Examiner Wilkinson: The documents just referred to will be received as Exhibit No. 60.

(Exhibit No. 60, Witness Curry, received in evidence.)

Mr. Wood. That is all we have of Mr. Curry, unless any cross examination is desired, otherwise we will put on another witness.

Examiner Wilkinson: Are there any questions of Mr. Curry? [2149]

Mr. Willard: May we reserve the right until we have an opportunity to examine the documents that will be submitted through him—

Examiner Wilkinson: To recall Mr. Curry if necessary?

Mr. Willard: —for cross examination, yes.

Mr. Coulson: I would like to make a similar reservation, Mr. Examiner.

Examiner Wilkinson: You are excused under those conditions.

Mr. Clay: We would like to make a similar reservation.

Mr. Swaine: Just a minute, Mr. Curry. Mr. Clay wants to clear up one point.

Mr. Clay: An order of the Commission has been introduced which was entered upon an application

(Testimony of M. J. Curry.)

by the railroad made to the Reconstruction Finance Corporation. If they are going to put the order in, it would seem logical to put the application upon which the order was made in also.

Mr. Swaine: We have no objection.

Mr. Wood: That is, application to the Reconstruction Finance Corporation and the I. C. C. dated May 23, 1932, as amended and supplemented by further applications dated June 7, 1932 and June 10, 1932.

You can produce those, Mr. Curry?

The Witness: Yes.

Mr. Wood: Along with these other documents of which [2150] you have a note.

If there is no further cross examination of Mr. Curry, I would like to put Mr. Buckley on the stand.

Examiner Wilkinson: You are excused, Mr. Curry.

(Witness excused.)

Mr. Wood: I would like to call Mr. Buckley as a witness.

CARL E. BUCKLEY

was sworn and testified as follows:

Direct Examination

Q. (By Mr. Wood) Mr. Buckley, you are an officer of the Chase National Bank? A. I am.

Q. What position do you hold?

A. Second vice president.

Q. You are connected with what department of the bank? A. Corporate Trust.

Q. How long have you been connected with the Corporate Trust Department as an officer?

A. As an officer, since 1929.

Q. You were an officer of the Corporate Trust Department during the period from February 11, 1931, to January 29, 1932? A. I was.

Q. As such an officer you are familiar with the records of the Corporate Trust Department relating to the administration of [2151] corporate mortgages? A. Yes.

Q. During this period February 11, 1931 to January 29, 1932, Mr. Henry E. Cooper, individual trustee under the first mortgage, was a vice president of the Chase Bank? A. He was.

Q. The records of Mr. Cooper, individual trustee, were kept in the Corporate Trust Department of the Chase National Bank? A. They were.

Q. You are familiar with those records?

A. Yes.

Q. Are you familiar with the records of the in-

(Testimony of Carl E. Buckley.)

dividual trustee which were kept in the Corporate Trust Department relating to the authentication and delivery of five million dollars principal amount of the first mortgage bonds and the applications for withdrawal of the cash proceeds of those bonds in connection with the Northern California Extension?

A. I am.

Q. You are also familiar with the procedure that was followed in connection with those applications? A. Yes.

Q. Will you state briefly what procedure was followed in connection with taking down the bonds and taking down the [2152] cash, just to give the picture of what took place?

A. Mr. Henry E. Cooper was the individual trustee during this period. The Corporate Trust Department was organized to take care of transactions involving authentication and delivery of bonds, and the take-down of cash under corporate mortgages was handled in the Corporate Trust Department.

Pursuant to a running arrangement with Mr. Cooper, we handled these transactions referred to.

Q. In what form did the applications come in from the railroad company? Was there one set or were they in duplicate or in what form?

A. The applications came in in duplicate form. When they were approved by our counsel, pursuant to the instructions of the corporate trustee and the individual trustee we delivered one duplicate set to the corporate trustee and retained the other.

(Testimony of Carl E. Buckley.)

Q. The Corporate Trustee at this time was the Crocker First Federal?

A. Crocker First Federal of San Francisco.

Q. Did you act on behalf of the Crocker First Federal Trust Company, as well as Mr. Cooper, in delivering bonds and paying cash?

A. We did. We acted in pursuance to their instructions.

Q. Mr. Buckley, will you produce from the files of the [2153] individual trustee the files relating to the authentication and delivery of one million dollars principal amount of first mortgage bonds on February 11, 1931?

(The Witness complied with the request.)

Q. Will you describe the documents which are in there? Just identify them.

A. This is a copy of a contract dated January 28, 1931, signed by the Western Pacific Railroad Company and the Western Pacific Railroad Corporation.

Q. For what did that contract call?

A. The Corporation purchased from the Company; the Company sold to the Corporation.

Q. By the Corporation you mean—

A. Western Pacific Railroad Corporation.

Q. And "Company" is—

A. Western Pacific Railroad Company—purchased one million dollars principal amount of first mortgage 5 percent gold bonds of the Company at 97.5 percent of their face amount, together with the accrued interest.

(Testimony of Carl E. Buckley.)

Certified copy of resolutions adopted at a meeting of the Executive Committee of the Western Pacific Railroad Company held on February 11, 1931.

Q. What was the effect of those resolutions?

A. The Company resolved that it call upon the trustee under its first mortgage for the authentication pursuant to [2154] paragraph B of Section 2 of Article II of the first mortgage of one million dollars principal amount of first mortgage 5 percent bonds.

Certified copy of a resolution adopted at a meeting of the Board of Directors of the Western Pacific Railroad Corporation, at a meeting held on October 14, 1930. The effect of that was that five million dollars principal amount of first mortgage 5 percent bonds were to be issued by the Company under and secured by its first mortgage dated June 26, 1916, to First Federal Trust Company (Crocker First Federal Trust Company, Successor) and Henry E. Cooper—I do not know how voluminously you wish me to go into these things.

Q. I just want enough to identify them and characterize their contents.

A. The president or any vice president of this company is authorized and directed to execute in the name of the company said First Mortgage 5 Percent Bonds of the aggregate amount of five million dollars in such denominations as he may determine and to cause the corporate seal of the company to be affixed thereto and attested by the sec-

(Testimony of Carl E. Buckley.)

retary of the company, and deliver the bonds to the trustee under such first mortgage.

"Further resolved, that in case any of the officers of this company who shall have signed or sealed any of [2155] the permanent bonds of said issues"—

Q. I do not think we need that, just enough to identify it.

A. Certified copy of an order of the Interstate Commerce Commission, Finance Docket 8473, ordering that "The Western Pacific Railroad Company be, and it is hereby, authorized to issue not exceeding five million dollars of First Mortgage 5 Percent bonds under and pursuant to, and to be secured by, the First Mortgage dated June 26, 1916, made by it to the First Federal Trust Company and Henry E. Cooper, trustees."

Said bonds to be sold to the highest bidder in conformity with the regulations prescribed in the Commission's order of October 6, 1919, as amended October 4, 1920, in Ex Parte 54, but at not less than 97.5 per cent of par and accrued interest.

As part of that certified copy is a report of the Commission, docket 8473, submitted October 1, 1930, decided October 6, 1930.

Q. I think that is enough on that order.

A. Letter of transmittal dated October 20, 1930, signed by F. M. Angellotti, general counsel of the Western Pacific Railroad Company.

Q. That was transmitting the application papers?

(Testimony of Carl E. Buckley.)

A. Transmitting certified copy of resolution of the Board [2156] of Directors of the railroad company and certified copy of resolutions adopted by the Board of Directors of the Western Pacific Railroad Corporation.

Letter dated December 4, 1930, from Crocker First Federal Trust Company, addressed to the Chase National Bank, and forwarding to them a million dollars face value of Western Pacific Railroad Company first mortgage Series A gold bonds, stating that they had been executed by the company and certified by the Crocker First Federal Trust Company as Corporate trustee, and requesting the Chase National Bank, when it had received all papers required by the first mortgage for the certification of the bonds, approved in writing by Messrs. Murray, Aldrich and Webb, to certify the bonds as individual trustee, and thereafter the bonds are to be held by us as agent for them as trustee, subject to the receipt of the purchase price for account of the trustee and an order for delivery from the railroad company approved in writing by Messrs. Murray, Aldrich and Webb, and that they be notified upon receipt of such order.

The papers should be obtained in duplicate, and copies sent to the Crocker First Federal Trust Company.

Q. You have some similar letters relating to the additional batches of first mortgage bonds?

A. I have four letters of similar nature, aggre-

(Testimony of Carl E. Buckley.)

gating [2157] four million dollars principal amount
of bonds.

Q: I do not think it is necessary to read all those.

Mr. Nicodemus: Is it necessary to introduce all of them? Are they seven identical sets of papers?

Mr. Wood: I want to get the picture of the procedure that took place here after the first set. I think we can shorten it by indicating that the procedure was similar on each of the others, and consequently putting the papers in.

Mr. Nicodemus: I am trying to keep them out on the theory that they are similar.

The Witness: The dates of those are December 3, 1930, December 4, 1930, December 5, 1930, and December 6, 1930.

Telegram addressed to the Chase National Bank of the City of New York by Crocker First Federal Trust Company, dated February 10, 1931, requesting the Chase Bank to deliver a million dollars Western Pacific Company first mortgage 5 per cent bonds upon payment for account of trustees under first mortgage Western Pacific Railroad Company of 97.5 per cent of face value, and on submission of papers approved by Murray, Aldrich and Webb; also requesting the Chase Bank to honor requisition 244 of Western Pacific Railroad Company calling for payment of cash deposited with trustees amounting to \$975,000, on submission of papers approved by Murray, Aldrich and Webb. [2158]

The telegram also stated that they will affix docu-

(Testimony of Carl E. Buckley,) monetary tax stamp to the mortgage; on February 11, 1931.

Letter dated February 14, 1931, addressed to the Crocker First Federal Trust Company and Henry E. Cooper as trustees under the first mortgage of the Western Pacific Railroad Company, dated June 26, 1916.

Q. (By Mr. Wood) That was merely the opinion of counsel that was given?

A. Signed by Murray, Aldrich and Webb, and that is the opinion of counsel given on the transaction involving the authentication and delivery of one million dollars principal amount of first mortgage bonds.

Q. I think that is sufficient to identify that.

A. Letter dated February 14, 1931, addressed to the Chase National Bank by Messrs. Murray, Aldrich and Webb, enclosing their opinion in duplicate, addressed to the Crocker First Federal, and Henry E. Cooper as trustees.

Letter dated February 17, 1931, addressed to Crocker First Federal Trust Company by the Chase National Bank, advising them that on February 11, 1931, they delivered to the Western Pacific Railroad Company a million dollars principal amount of first mortgage Series A .5 per cent gold bonds, and that in connection with the delivery it had received from Murray, Aldrich and Webb their opinion letter dated February 14, 1931, which is enclosed with [2159] the various documents outlined in their

(Testimony of Carl E. Buckley.)

letter. There is also enclosed a receipt of the railroad company for the delivery of the bonds.

Letter dated February 24, 1931, from Crocker First Federal Trust Company, San Francisco, addressed to the Chase National Bank, acknowledging its letter of February 17, 1931, confirming that \$500 face amount of documentary United States Internal Revenue stamps have been affixed to the original counterpart of the mortgage and have been cancelled.

Receipt dated February 11, 1931, signed by the Western Pacific Railroad Company, addressed to the Chase National Bank of the City of New York as agent for the trustees under the Western Pacific Railroad Company first mortgage for a million dollars principal amount of Western Pacific Railroad Company first mortgage bonds.

Mr. Wood: Could I see that file just a moment, Mr. Buckley?

I will read the first paragraph in this letter from the Chase National Bank to the Crocker First Federal Trust Company, which copy is here:

"We advise that on February 11, 1931, we delivered to the Western Pacific Railroad Company one million dollars principal amount of first mortgage Series A 5 per cent gold bonds of the Western Pacific Railroad Company, numbered [2160]—and the numbers are given—"against payment to us of \$975,000 for account of the trustees under the first mortgage."

(Testimony of Carl E. Buckley.)

Does that indicate to you, Mr. Buckley, that that cash was deposited to you? A. It does.

Mr. Wood: I want to offer this file in evidence. We have photostatic copies, but we have not had time to make a sufficient number for distribution. We would like to substitute one photostatic copy with the Commission, with the understanding that we will furnish additional copies for the various parties, and that same understanding I should like to have with respect to all of these first mortgage files.

Examiner Wilkinson: Is there any objection to the receipt?

Mr. Coulson: I would like it understood that I am making the same objection to these documents put in through this witness as I made to the documents put in through Mr. Curry. I think we are dragging in a lot of material that is irrelevant, and I am unpersuaded that it is not irrelevant to this moment.

Examiner Wilkinson: The documents just referred to by this witness, which I understand are known as the first mortgage file—

Mr. Wood: It is a file taken from the files of the [2161] individual trustee under the first mortgage. These applications were submitted in duplicate. They came first as a rule to the individual trustee, and one set was sent to the Crocker First Federal, the corporate trustee, and one set was kept in the files of the Chase National Bank on behalf of the individual trustee.

(Testimony of Carl E. Buckley.)

Examiner Wilkipson: —will be received as Exhibit 61.

(Exhibit No. 61, Witness Buckley, received in evidence.)

Examiner Wilkinson: We will recess now until 1:30 o'clock p. m.

(Whereupon, at 12:40 o'clock p. m., a recess was taken until 1:30 o'clock p. m. of the same day.)

[2162]

After Recess

1:30 o'clock p. m.

CARL E. BUCKLEY

testified further as follows:

Direct Examination

Mr. Wood: Mr. Examiner, apropos of the discussion this morning regarding the production of records from the General and Refunding Mortgage, I want to say on behalf of Mr. Buckley and the Chase National Bank that the bank is ready to produce all of the records of the General and Refunding files at the request of the bondholders. They can get the files down here tonight and have them ready to be put in in the morning.

As counsel I feel that I ought not to take any part in the introduction of those documents. Counsel are here and they can examine the documents before the hearing and put in anything they want. Mr. Buckley will go on the stand and identify them, and

(Testimony of Carl E. Buckley.)
assist counsel in any way possible. A telephone call to New York will get the documents down here to-night or first thing in the morning.

Mr. Swaine: In order to clarify that particular point, there were only three issues of refunding bonds taken down.

Mr. Wood: I think it was three, possibly four.

Mr. Swaine: The documents will not be very voluminous, [2163] will they?

The Witness: On that bond alone?

Mr. Wood: Yes.

Mr. Clay: We think the mortgage trustee should have a counsel. We know nothing about what your file contains. You are still the mortgage trustee.

Mr. Wood: Unfortunately, in this situation there has been no time to make substitution.

Mr. Clay: There is no time for us to familiarize ourselves with the documents.

Mr. Wood: The documents are not very voluminous. You could examine them, I think, in half an hour easily. Mr. Buckley will have them here and can explain what is in them.

Mr. Clay: The responsibility is not the bondholders', it is the mortgage trustee's. Why have a mortgage trustee at all?

Mr. Wood: Unfortunately, we have this conflict where the trustee has resigned and no new trustee has been substituted.

Mr. Clay: You are still the acting trustee.

Mr. Wood: We are, and we are ready to produce the records.

(Testimony of Carl E. Buckley.)

Mr. Swaine: So far as those records are concerned, there is no conflict of interest. All we want is to identify [2164] what documents were delivered to the trustee to take down the bonds. If the documents are produced, why can they not be put in with the consent of all parties in interest? Those are the documents which the trustee received against which the bonds were deposited.

Mr. Clay: Personally, I do not feel I am justified in taking the responsibility of what should go in and what should not, because I do not know what the documents are and I would not want to do it on half an hour's casually going through the files.

Mr. Wood: Anything we have to put in would be on the part of the first mortgage trustee's case, and I think it would be an imposition for me to do that.

Mr. Clay: You mean you are counsel for Mr. Armstrong?

Mr. Wood: Exactly.

Mr. Clay: Of course, our trustee is the Chase Bank, which still is the trustee of the General and Refunding mortgage.

Mr. Wood: Exactly.

Mr. Clay: So you are down here not representing the Chase Bank or Mr. Armstrong?

Mr. Wood: I do not feel I should represent two or three conflicting interests.

Mr. Swaine: I am perfectly willing to resolve that difficulty. As part of the case of the Institutional [2165] Bondholders' Committee I would like

(Testimony of Carl E. Buckley.)

to know what the facts are with respect to the creation of the General and Refunding mortgage. I do not care whom the facts hit. I would like to know what the facts are.

I would like to request that the Chase as trustee under the General and Refunding mortgage produce those documents here tomorrow morning, and I will assume the burden of putting them in if nobody else will. They are perfectly relevant to our case.

Examiner Wilkinson: As far as the Examiner is concerned, he is not making any suggestions to counsel as to how they should try their case. The only thing the Commission is concerned with is to get the facts in the record. If Mr. Wood will see that they are produced here, we will get them in the record.

Mr. Swaine: I would like to make the request, then, on behalf of the Institutional Bondholders' Committee, that the files of the trustee under the General and Refunding Mortgage with reference to the authentication of bonds under that mortgage be produced tomorrow morning.

Examiner Wilkinson: Do you have any objection to that, Mr. Clay?

Mr. Clay: No.

Mr. Willard: No.

Mr. Wood: We undertake to produce the documents. [2166]

(Testimony of Carl E. Buckley.)

Mr. Buckley, if a short recess is taken now, could you telephone to New York and get those documents down here tonight?

(Discussion off the record.)

Mr. Coulson: The difficulty with this course of procedure, trying to sit continuously until we get these documents in, is that it may well be that when all the trustees put in these various documents questions will be suggested to one party in interest or another as to a matter that needs to be supplemented, and we may have to have another hearing anyway. I have no objection to continuous sessions if it serves a useful purpose, but I am afraid we are going by this dumping in of bushels of documents for later examination only to aggravate the time element instead of solving it.

Mr. Swaine: These are just a few documents. They relate to three transactions, and if counsel are going to want to take an adjournment after they see them, let them see them and take an adjournment tomorrow after seeing them, instead of taking an adjournment after two weeks from tomorrow or some later date.

Examiner Wilkinson: I think the sooner they are produced, in as much as they are going to be put in the record, the better it is.

Mr. Nicodemus: They can be produced tomorrow, except [2167] the originals. We have to go back again and photostat them.

Mr. Swaine: That is true of a lot of it.

(Testimony of Carl E. Buckley.)

Mr. Nicodemus: I would much rather come back a week from today with everything in shape.

Examiner Wilkinson: I will be guided by the desires of the parties here.

Mr. Swaine: I think we ought to get these here and produce them and have them identified, then the photostats can be distributed. If there is any need for further hearing, we can have it.

Examiner Wilkinson: If there is no real objection to it on the part of the parties, and if Mr. Buckley wants to be excused here to telephone, we can excuse him temporarily to do that.

We will take a short recess.

(Whereupon a short recess was taken.)

Mr. Clay: Mr. Examiner, while we are waiting, there is a matter I would like to clear up:

The interest due on the notes of the Western Pacific Railroad held by the Reconstruction Finance Corporation to and including June 30, 1936, was \$454,689.30. The interest which will be due on said notes to and including December 31, 1936, will be \$544,309.90.

Mr. Nicodemus: Is the amount correctly stated in— [2168]

Mr. Clay: Those figures are taken from the books of the treasurer of the Reconstruction Finance Corporation.

Mr. Nicodemus: Is the amount correctly stated in the Debtor's plan as of January 1, 1936?

Mr. Clay: I do not know.

(Testimony of M. J. Curry.)

Mr. Swaine: Those figures vary quite a bit, \$80,000, from the figures stated in the Institutional Bondholders' Committee plan. The figures stated in the plan were obtained from the Debtor; therefore, the Debtor and the Reconstruction Finance Corporation apparently are some \$80,000 apart on the amount of interest which will be accrued up to January 1, 1937. I do not care what it is, but I would like to have the facts correct. I wish the Debtor and the Reconstruction Finance Corporation would get together and find out what the difference is, and why it is.

Mr. Clay: The figures which I have just given are the figures of interest which the Reconstruction Finance Corporation claims, and they are taken from the books of the treasurer of the Reconstruction Finance Corporation.

Mr. Curry: I think the reason for that is, Mr. Clay—

Mr. Clay: I do not care about the reason. I just want it stated of record what our claim is.

Mr. Curry: I think you are accruing on a 5 per cent basis. That is what I think. [2169]

Mr. Clay: That is what we are claiming.

Mr. Nicodemus: Can you give us the detail of the claim, its interest base, and the particular rate?

Mr. Clay: The interest specified in the notes is from the date that the interest went into default.

Mr. Swaine: In order that it may appear in juxtaposition to this statement, I think that should

(Testimony of M. J. Curry.)

the Commission approve the plan proposed by the Institutional Bondholders the plan ought to be modified to state the correct amount of principal plus interest accrued to January 1, whatever that may be.

Mr. Clay: I think it should.

Mr. Swaine: The plan as presented ought to be modified if the figure in the plan as presented is incorrect.

Examiner Wilkinson: Has the claim of the Reconstruction Finance Corporation been filed with the court?

Mr. Clay: The claim has been filed with the court.

Examiner Wilkinson: Will that claim correspond with the figures you have given?

Mr. Clay: It will correspond with the figures I have given.

Mr. Swaine: It is approximately \$80,000 difference, as I get the figures.

Mr. Clay: No, it is about \$120,000.

Q. (By Mr. Wood) Mr. Buckley, in Exhibit No. 61, which [2170] you identified before the adjournment, reference was made to cash requisition No. 244. Will you please produce that? Will you identify and describe the documents, briefly, that are contained in that file?

A. There is a certificate signed by the president and treasurer of the Western Pacific Railroad Company, dated February 11, 1931; attached to which is Exhibit A.

(Testimony of M. J. Curry.)

Q. Exhibit A is what, briefly?

A. Exhibit A is a certified copy of the minutes of a meeting of the stockholders of the company at a meeting called and held on September 22, 1930, which says that—

Q. I would not read the contents; just identify it.

A. Exhibit B is a certified copy of the extracts from the minutes of the meeting of the stockholders of the Western Pacific Railroad Corporation at a meeting held on October 15, 1930.

Q. That is stockholders or directors?

A. Stockholders.

A certified copy of the resolution adopted at a meeting of the Executive Committee of the Western Pacific Railroad Company at a meeting held on February 11, 1931.

An opinion letter dated February 11, 1931, addressed to the Crocker First Federal Trust Company and Henry E. Cooper, trustees under the first mortgage of the Western Pacific Railroad Company, signed by F. M. Angellotti, [2171] general counsel of the Western Pacific Railroad Company.

Letter dated February 14, 1931, addressed to Crocker First Federal Trust Company and Henry E. Cooper as trustees under first mortgage of Western Pacific Railroad Company, signed by Murray, Aldrich and Webb, transmitting certain papers submitted in connection with requisition No. 244.

Copy of letter dated February 14, 1931, addressed

(Testimony of M. J. Curry.)
to Crocker First Federal Trust Company by Chase National Bank, advising it that on February 11, 1931, it paid to the Western Pacific Railroad Company, \$975,000, representing the proceeds of sale of one million dollars principal amount of first mortgage bonds of Western Pacific Railroad Company, at 97.5, and stating that the payment was made against the expenditures by the railroad company covered by their requisition 244.

It also transmitted a receipt of the railroad company for the payment, and includes an opinion letter of Murray, Aldrich and Webb, dated February 14, 1931, with various documents mentioned in their letter.

A letter dated February 24, 1931, addressed to the Chase National Bank by Crocker First Federal Trust Company, acknowledging receipt of their letter of February 17, 1931, relative to the payment of \$975,000 on requisition 244. [2172]

Duplicate receipts signed by M. J. Curry, assistant treasurer of the Western Pacific Railroad Company, addressed to the Chase National Bank, for \$975,000, payment made on requisition 244.

Mr. Wood: I offer that in evidence and we will substitute the photostatic copies as in the other case.

Examiner Wilkinson: The documents just referred to by the witness will be received as Exhibit No. 62.

(Exhibit No. 62, Witness Buckley, received in evidence.)

(Testimony of M. J. Curry.)

Mr. Nicodemus: Can you not stipulate that these documents are substantially identical to exhibit 61, except as to amounts and dates?

Mr. Wood: This is a different one.

Mr. Nicodemus: They all follow the same point. This is just a draw-down of the funds.

Mr. Wood: Let me explain what took place in each of the cases. I think it will make the record a little clearer:

In each case the railroad company first applied for authentication and delivered bonds upon the deposit of the cash proceeds of their sale, which in every case was 97.5 of the face amount. Then simultaneously they made application on these requisitions for the withdrawal of the cash proceeds so deposited against the certification of expenditures on the Northern California Extension. This [2173] second file is the take-down of the cash proceeds of the one million dollars of bonds that were referred to in the first file.

Mr. Nicodemus: I see. In each case we will have a series of take-downs of bonds followed by take-downs of cash simultaneously. The point is that one exhibit is typical of any other series that you produce here to absorb the five million dollars.

Mr. Wood: Exactly.

Mr. Nicodemus: We are cluttering up the record with all this identification of documents that are voluminous and have to be reproduced at great expense.

(Testimony of M. J. Curry.)

Mr. Swaine: The dates are very important here.

Mr. Nicodemus: Cannot the witness supply the dates? Is there any objection to the dates being supplied by the witness?

Examiner Wilkinson: Of course, the exhibit will be in the record and will speak for itself. As I understand, this is purely a question of identification, is it not? The witness' testimony is purely identifying the exhibits?

Mr. Nicodemus: They propose a series, as I understand, of about 14 exhibits.

Examiner Wilkinson: If an exhibit can be offered, and a statement sufficiently descriptive for identifying it can be made, that is all that is necessary, so far as I [2174] see it.

Mr. Nicodemus: You could make a statement on the record, could you not, Mr. Wood?

Mr. Coulson: That is open to the objection, Mr. Nicodemus, that if this point is going to be labored over, the other creditors ought to have an opportunity to examine these documents. It would be a considerable convenience to have copies of them for that purpose. So long as we have let so much of this go in, I do not see why these should not be put in, and give us an opportunity to see them.

Mr. Wood: These documents do vary also in the description of expenditures made. In other words, the expenditures are for different purposes in connection with the construction of the line, so that I think it would be well to have them all in.

(Testimony of M. J. Curry.)

Mr. Nicodemus: If counsel insists on it; my suggestion was only in the interest of holding down the record, which is getting beyond all reasonable proportions.

Mr. Wood: In connection with this first one, I would like to read portions of these as typical of the cash requisitions.

The minutes of the meeting of stockholders of the Western Pacific Railroad Corporation, which is the holding company of the railroad company, begins as follows: [2175]

"The Chairman stated that a further purpose of the meeting was the consideration of a proposal to consent to the authentication and delivery of \$5,000,000 principal amount of the First Mortgage bonds of the Western Pacific Railroad Company, to bear interest at the rate of 5 per cent per annum and to be issued under the first mortgage of said company, dated June 26, 1916, and/or the payment of the proceeds of such bonds held in the form of deposited cash by the trustees on this said first mortgage with respect to the constructing, purchasing and/or otherwise acquiring by the Western Pacific Railroad Company of its proposed so-called 'Northern California Extension', consent of stockholders of this corporation being required under said mortgage, because of the fact that the total expenditure made or to be made in connection with such project would exceed \$1,000,000."

Then follows a recital of the provisions of the mortgage, and then a resolution:

(Testimony of M. J. Curry.)

"Now, therefore, be it resolved, that the consent of the stockholders of this corporation be and it is hereby given to the authentication and delivery of \$5,000,000 principal amount of the first mortgage bonds of the Western Pacific Railroad Company to bear interest at the rate of five per cent per annum, and to be issued under the first mortgage of said company, dated June 26, [2176] 1916, and/or the payment of the proceeds of such bonds held in the form of deposited cash by the trustees under said first mortgage with respect to the constructing; purchasing, and/or otherwise acquiring by the Western Pacific Railroad Company of its proposed so-called 'Northern California Extension' to begin at a point on the existing main line of said company in the vicinity of Keddie, Plumas County, California, and to connect at a point at or near Bieber, Lassen County, California, with a line built or to be built by Great Northern Railway Company from Klamath Falls southerly to said point at or near Bieber, California, being a total distance of approximately 112 miles; and also including a joint terminal to be jointly owned by said company and said Great Northern Railway Company at or near said Bieber; and also including a line of railroad to be jointly acquired and/or constructed and owned by the Western Pacific Railroad Company and Great Northern Railroad Company, extending from a point on the proposed line of said Great Northern Railway Company in the vicinity of Lookout, Mo-

(Testimony of M. J. Curry.)

doc County, California, westerly to a connection with the McCloud River Railroad at or near Hambone, Siskiyou County, California, being a line approximately 36 miles in length."

Mr. Homire: Is this part of the exhibit that is to be put in that you are reading? [2177]

Mr. Wood: This is part of the exhibit.

Mr. Homire: It means it is going in the record twice. Is that necessary?

Mr. Wood: I am not going to read the entire document.

Examiner Wilkinson: The exhibit, of course, will speak for itself. As I understand, this is purely descriptive of the exhibit.

Mr. Wood: Exactly. I am merely calling attention to certain pertinent parts of these exhibits.

Then we have the certificate of the president and treasurer certifying that.

"Expenditures to the amount of \$999,998.98 have been actually made by the Western Pacific Railroad Company after June 30, 1916, to-wit, between February 1, 1929 and November 30, 1930, both inclusive, for the construction of a new line of railroad, known as this company's 'Northern California Extension,' "

and then follows the description of the line in language similar to what I just read.

Then it goes on:

"Said expenditures consist of the following items:

(Testimony of M. J. Curry.)

“Engineering	\$244,777.82
Land for Transportation	
Purposes	121,377.67
Grading	589,393.37
	[2178]
Tunnels and Subways	\$ 44,450.12

And then the total.

“Reimbursement is sought from cash deposited under Section 2 of Article Second of said first mortgage, the amount of reimbursement being \$975,000, in accordance with the provisions of said first mortgage.”

Then is a description of the line. I will not read all of this.

Mr. Coulson: If the Examiner please, I hesitate to interrupt Mr. Wood, but it seems to me that all of this laboring with factual data offered to the Commission might better be reserved to the brief. It would be interminable here if we have running argument with every exhibit that is put in.

Mr. Wood: I am not going to do it. This is all descriptive.

Examiner Wilkinson: Counsel says that it is descriptive of his exhibit, and the Examiner does not like to cut him off. He expects him to use his discretion, though, of course, to make it as short as possible.

Mr. Wood: I assure you I will do that, Mr. Examiner.

(Testimony of M. J. Curry.)

The certificate then states:

"That so far as known or believed by us the property so constructed or acquired as aforesaid, is not subject to any lien or charge except (a) necessarily undetermined [2179] liens or charges ordinarily incident to construction and (b) the lien of said first mortgage."

The resolutions of the Executive Committee contain the following language:

"All portions of said extension which have been constructed and/or acquired being subject to the lien of said first mortgage and now in the possession of this company."

In the opinion of F. M. Angellotti, general counsel to the railroad company, appears this:

"In my opinion title to all those portions of this company's new line of railroad known as its 'Northern California Extension' and to all of the property which is mentioned in the certificate of H. M. Adams, president, and E. C. Bates, treasurer, of the Western Pacific Railroad Company, dated February 11, 1931, which accompanies this opinion * * * has vested in the Western Pacific Railroad Company, subject only to liens or charges certified in said certificate and to liens or charges of the character not required to be certified under the terms of paragraph 'Second' of sub-section D of section 2 of Article Second of the Western Pacific Railroad Company's first mortgage dated June 26, 1916, and all deeds, conveyances, or other instru-

(Testimony of M. J. Curry.)

ments necessary to vest the title to said property in said company have been executed and delivered [2180] to it, and all said portions of said extension and said property are subject to the lien of this company's first mortgage, and no supplemental indenture or instruments of further assurance are necessary to subject said property or any part thereof, to the lien of said first mortgage, subject only to the liens and charges aforesaid."

That answers a question that was raised earlier in the proceeding.

Mr. Coulson: May I here add, then, to my objection to the receipt of these documents that if the idea of presenting them is to put before the Commission as having probative force opinions of counsel on which the trustee proceeded in refraining from taking a supplemental indenture putting the Northern Extension under the first mortgage, I think it is a quite improper type of evidence. I do not think it is under any theory of law orderly procedure and evidence. It might be important in any action against the trustees on the part of the first mortgage bondholders for negligence, but putting it in this record here seems to be quite improper.

Mr. Wood: These are merely introduced as part of the files which the trustees received, the application papers which the trustees received in connection with the take-down of cash.

(Testimony of M. J. Curry.)

Mr. Coulson: My additional objection is prompted by the [2181] emphasis you give to Angelotti's opinion.

Examiner Wilkinson: I think that if counsel hereafter in introducing these exhibits will be a little briefer the Examiner would appreciate it. These exhibits are being received in line with the ruling made at the beginning of this testimony. It is understood that all of the evidence will be subject to a motion to strike after the other parties have received copies of them.

Mr. Wood: Mr. Examiner, I merely wanted to use the first two as typical of the others.

Mr. Nicodemus: You were reading from Exhibit 62? I want to make that clear.

Mr. Wood: 62, yes, with those which follow. If it is agreeable, I am going to ask Mr. Buckley merely to identify the files without even identifying the individual documents, with the understanding that the documents contained are similar to those which have just been introduced.

Mr. Homire: It is understood that the Reconstruction Finance Corporation will reserve the right to strike this evidence out if on examination of it we find it objectionable.

Examiner Wilkinson: The parties to the proceeding will have the right to move to strike them from the record after they have seen them. [2182]

Mr. Wood: Mr. Buckley, will you please produce the file relating to the authentication of one

(Testimony of M. J. Curry.)

million dollars of bonds on June 25; 1931, against the deposit of \$975,000 in cash, and with that requisition No. 246 relating to the payment on the same date of that \$975,000 in cash?

(Discussion off the record.)

Mr. Wood: First let us have the bond take-down. I do not think you want me to do any more than offer it in evidence, Mr. Examiner.

Examiner Wilkinson: The documents referred to will be received as Exhibit No. 63.

(Exhibit No. 63, Witness Buckley, received in evidence.)

Mr. Wood: Then the requisition No. 246 calling for \$975,000 of cash.

Examiner Wilkinson: The document will be received as exhibit No. 64.

(Exhibit No. 64, Witness Buckley, received in evidence.)

Mr. Wood: Then on July 23, 1931, authentication and delivery of \$900,000 of bonds in deposit of \$877,500 in cash.

Examiner Wilkinson: The document will be received as Exhibit 65.

(Exhibit No. 65, Witness Buckley, received in evidence.)

Mr. Wood: On the same date, requisition No. 247 for \$812,571.03 in cash. [2183]

Examiner Wilkinson: The documents will be received as Exhibit 66.

(Exhibit No. 66, Witness Buckley, received in evidence.)

(Testimony of M. J. Curry.)

Mr. Wood: October 24, 1931, requisition No. 248 for \$64,928.97 in cash.

Examiner Wilkinson: These documents will be received as Exhibit 67.

(Exhibit No. 67, Witness Buckley, received in evidence.)

Mr. Wood: On November 25, 1931, authentication and delivery of \$750,000 of bonds against deposit of \$731,250 in cash.

Examiner Wilkinson: These documents will be received as Exhibit No. 68.

(Exhibit No. 68, Witness Buckley, received in evidence.)

Mr. Wood: On the same date, requisition No. 250 calling for \$731,250 in cash.

Examiner Wilkinson: These documents will be received as Exhibit No. 69.

(Exhibit No. 69, Witness Buckley, received in evidence.)

Mr. Wood: On January 8, 1932, application for \$350,000 of bonds against deposit of \$341,250 in cash.

Examiner Wilkinson: These documents will be received in evidence as Exhibit No. 70.

(Exhibit No. 70, Witness Buckley, received in evidence.)

Mr. Wood: On the same date, requisition No. 251, call- [2184] ing for \$241,250 in cash.

Examiner Wilkinson: These documents will be received as Exhibit No. 71.

(Testimony of M. J. Curry.)

(Exhibit No. 71, Witness Buckley, received in evidence.)

Mr. Wood. On January 29, 1932, application for one million dollars of bonds against deposit of \$975,000 in cash.

Examiner Wilkinson: These documents will be received as Exhibit No. 72.

(Exhibit No. 72, Witness Buckley, received in evidence.)

Mr. Wood: On the same date, requisition No. 252, calling for \$975,000 in cash.

Examiner Wilkinson: These documents will be received as Exhibit 73.

(Exhibit No. 73, Witness Buckley, received in evidence.)

Q. (By Mr. Wood) Mr. Buckley, I show you a telegram and ask you if that was received by the Chase National Bank. A. It was.

Mr. Wood: This telegram is a telegram from the Crocker First National Bank, the corporate trustee, stating what its records show as to the recordation of the first mortgage in Plumas and Lassen Counties, which are the counties in which the Keddie-Bieber Line is situated. I realize it is not the best evidence, but I would like to offer it, if there is no objection. If you desire the original documents [2185] we can get them from San Francisco at a later date, but it may save time if we proceed on this telegram. You realize, of course, that we do not have time to get the original documents here for this hearing.

(Testimony of M. J. Curry.)

Examiner Wilkinson: Is there any objection to the form of this telegram?

Mr. Coulson: No.

Examiner Wilkinson: It will be received as Exhibit 74.

(Exhibit No. 74, Witness Buckley, received in evidence.)

Mr. Wood: I would like to substitute a copy, and we will supply additional copies.

Mr. Nicodemus: Dated what day? October 21, 1936.

Mr. Wood: Now, Mr. Buckley, will you get those debentures files?

Mr. Nicodemus: Have you finished with the first mortgage?

Mr. Wood: I have finished with the first mortgage.

Mr. Nicodemus: Does that cover the entire five million dollars?

Mr. Wood: That covers the five million dollars.

Mr. Nicodemus: What are these resolutions in 1931 and 1932?

Mr. Wood: You mean that Mr. Curry identified?

Mr. Nicodemus: Yes.

Mr. Wood: I think those are the minutes of the meetings at which the resolutions in those files were adopted.

Mr. Nicodemus: Was your last draw-down the 17th of November?

Mr. Wood: No, January 29, 1932 was the last one.

(Testimony of M. J. Curry.)

Mr. Nicodemus: Have you covered that draw-down?

Mr. Wood: Yes.

Mr. Nicodemus: All right.

Mr. Wood: That was Exhibits 72 and 73.

Q. Mr. Buckley; will you please produce the file relating to the authentication and delivery on February 27, 1931, of one million dollars of debentures under the indenture of July 1, 1930, under which the Chase National Bank was trustee?

Unless counsel for the general mortgage bond-holders wish to identify these further, I am going to offer them in the same way that I have offered these first mortgage files, without reading them or doing any more than marking them as exhibits. But I wish to say this, Mr. Examiner, that we have not had photostatic copies of these made and I would like to have them subject to the same understanding as those Mr. Curry produced, that we will identify them and then offer them in evidence with photostatic copies as soon as we can have them made.

Examiner Wilkinson: As I understand it, you are not proposing now to offer physically any of these exhibits? [2187]

Mr. Wood: I do not want to put these original bank files into the record without being able to withdraw them. We have not been able to make photostatic copies.

Examiner Wilkinson: When is it proposed to supply copies of these?

(Testimony of M. J. Curry.)

Mr. Wood: As soon as we can have photostats made, and that will be as soon as we get back to New York. It will take only a few days to make them.

(Discussion off the record.)

Mr. Wood: The next is an application for \$600,000 of debentures, authenticated on March 26, 1931.

Mr. Nicodemus: Did you put in the one for February 27?

Mr. Wood: That is the one that I just mentioned.

The Witness: A million dollars.

Mr. Wood: The next one is application for \$530,000 of debentures, authenticated on May 25, 1931.

The next is application for \$995,000 of debentures, authenticated on June 20, 1931.

The next is an application for \$309,000 of debentures, authenticated on August 25, 1931.

The next is an application for \$600,000 of debentures, authenticated on October 20, 1931.

The next is an application for \$120,000 of debentures, authenticated on November 25, 1931.

The next is an application for \$350,000 of debentures, [2188] authenticated on January 29, 1932.

The next is an application for \$347,000 of debentures, authenticated on March 28, 1932.

The next is an application for \$149,000 of debentures, authenticated on May 31, 1932.

Q. Mr. Buckley, on March 1, 1932, do your files show cancellation of debentures? A. Yes.

(Testimony of M. J. Curry.)

Q. Will you state what took place on that date with respect to that cancellation?

A. On March 1, 1932, the Chase Bank received \$4,504,000 principal amount of Western Pacific Railroad Company 5 per cent gold debentures.

Q. How many were outstanding on that date according to your records?

A. That was the principal amount outstanding also.

Q. In other words, these were all of the debentures then outstanding?

A. All of the debentures authenticated and delivered, outstanding, for cancellation.

Q. Is there a letter in that file, Mr. Buckley, from Mr. W. W. Carman, vice president of the A. C. James Company relative to that cancellation?

A. Yes.

Q. Will you state briefly what the contents of the letter [2189] are?

A. This is addressed to the Chase National Bank and it says in connection with the delivery and surrender to the Chase National Bank as trustee of \$4,504,000 principal amount of 5 per cent gold debentures of the Western Pacific Railroad Company which were issued and are registered in the name of A. C. James Co., I desire to advise you that I have been authorized by each of the directors of A. C. James Co. to deliver and surrender the said debentures in exchange for the note of the Western

(Testimony of M. J. Curry.)

Pacific Railroad Company in the principal sum of \$4,504,000, with interest at the rate of 5 per cent per annum, secured by \$5,630,000 principal amount of the railroad company's general and refunding mortgage gold bonds, Series A.

It goes on to say that a certified copy of the resolution when adopted confirming this action will be furnished to you.

Q. Do you have a copy of that resolution that is referred to?

As to that, Mr. Examiner, I should like to offer this, and it is subject to the same understanding as these preceding files, that we will submit copies and offer the photostats in evidence.

Examiner Wilkinson: Mr. Wood, to get this straight on the record, I do not understand that you are offering [2190] these.

Mr. Wood: We are calling on Mr. Buckley to produce them.

Examiner Wilkinson: As I understand it; this is data which Mr. Swaine has requested you to produce.

Mr. Wood: Right..

Examiner Wilkinson: We have a witness here with the originals, and you undertake to furnish to Mr. Swaine the data which you are here describing?

Mr. Wood: That is right.

(Discussion off the record.)

(Testimony of M. J. Curry.)

Q. (By Mr. Wood) Mr. Buckley, in connection with the last two applications for debentures, the one on March 28, 1932 and the one on May 31, 1932, do those files show anything with respect to the cancellation of the debentures that were authenticated and delivered? There was a peculiar procedure there. Will you describe from the papers what took place in connection with that authentication and delivery?

A. In connection with the \$347,000 authentication and delivery, there is a certified copy of a resolution adopted at a meeting of the Board of Directors of A. C. James Company held on March 5, 1932, which resolves that the acts of the officers of the company in exchanging \$4,504,000 principal amount of the Western Pacific Railroad Company's 5 per cent debentures for a three-year [2191] note of the Western Pacific Railroad Company secured by the deposit of \$5,630,000 principal amount. General and Refunding Mortgage gold bonds of the railroad company be and is hereby ratified and approved and adopted as the act of the company.

Be it further resolved that the officers of the company are authorized and directed to advance to the Western Pacific Railroad Company the sum of \$347,000, to be represented by a collateral note of the Western Pacific Railroad Company bearing 5 per cent interest payable quarterly, maturing three years from the date thereof, secured by \$443,750 principal amount of the general mortgage gold bonds of the Western Pacific Railroad Company.

(Testimony of M. J. Curry.)

It goes on:

Resolved, that in the event that the Western Pacific Railroad Company is advised by its counsel that the advance to be made by A. C. James Company as authorized by the Board must pursuant to the authority of the Interstate Commerce Commission be consummated by an initial issue of the debentures of the railroad company and their immediate exchange for collateral notes, the officials of this company are hereby authorized and directed to consummate the transaction authorized by this Board in that manner, and to do any further acts and execute any further instruments necessary to carry out the purposes of this resolution. [2192]

Q. Do your files show that the debentures authenticated and delivered were immediately exchanged for a note and turned in to the trustee for cancellation?

A. The files show that the \$347,000 principal amount of debentures were surrendered on the same date, March 28, 1932, by Western Pacific Railroad Company, for cancellation.

Q. With respect to the final application, do the files show that a similar transaction took place?

A. That is correct, with respect to \$149,000 principal amount of debentures, on May 31, 1932.

Mr. Wood: Yes.

We are through with our case, Mr. Examiner.

Examiner Wilkinson: As I understand it, Mr. Wood, these last data that the witness has been tes-

(Testimony of M. J. Curry.)
tifying concerning are to be furnished in the shape
of an exhibit for the record?

Mr. Wood: All of those files will be photostated
and the file will be offered. Each file will be offered
in evidence, with the request that a photostated copy
be substituted for it and copies supplied to the vari-
ous parties.

Mr. Homire: If they have finished, there are one
or two things I would like to have the record show
on behalf of the Reconstruction Finance Corpora-
tion:

We would like to have in the record the Com-
mission's [2193] valuation reports on the Western
Pacific, the report which is reported in 29 Valua-
tion Reports, pages 239 to 279, and any supplements
if there are any, up to date. I am not sure whether
there are or not.

Mr. Nicodemus: Can that be introduced by ref-
erence to the published report?

Mr. Homire: I assume not, on the same theory
that was advanced earlier in the proceeding.

Mr. Swaine: Can it be stipulated that the Com-
mission's valuation was a certain amount as of a
certain day, and that the additions since that day
have been so much, so that by bringing it down to
date the total valuation as of the last date that you
have would be so much? We will stipulate that.

Mr. Nicodemus: I think it should be done that
way, in the interest of brevity.

Mr. Swaine: You are not interested in the detail
of that value, are you?

(Testimony of M. J. Curry.)

Mr. Homire: The same question came up as came up before. I have not examined carefully enough to know how much. I take it for granted all that we will want to put in is the final valuation as of the final date on which the Commission has placed a value on it. If there is anything in the report that we would like in, we would like to be at liberty to put it in. [2194]

Mr. Nicodemus: Those valuation reports are interminably long. They are referred to in the plan, and I do not think they have ever been put in the record, so far as I know.

Mr. Swaine: Before we leave that, can we not stipulate there as to the total valuation? You do not care about the detail, how much of it is in one thing and how much in another, do you?

Mr. Homire: It might be important as to some of these properties as to which the liens are in dispute.

Examiner Wilkinson: As a matter of fact, as far as the Western Pacific is concerned, unless this testimony is changed today, I do not understand that there were any separate mortgage divisions or anything of that type, that the value of the property would be applicable to the entire property as a unit, and so all you would be concerned with would be purely the final value. I think the suggestion of counsel that you could stipulate it would be better than trying to incorporate it by reference, because I will state now that I do not think we will be able to

(Testimony of M. J. Curry.)

allow anything in here by reference. If there is any difficulty by reason of anything today, it has to do solely with the Northern California Extension, and there would be no objection to stipulating the value of the Northern California Extension, certainly.

[2195]

Mr. Homire: We do not know to what extent there will be dispute.

Examiner Wilkinson: As a matter of fact, Mr. Nicodemus on some of the Debtor's exhibits or the plan shows these data to which Mr. Homire is referring.

Mr. Nicodemus: I think there is some evidence of the valuation.

Examiner Wilkinson: It seems to me that it is stated in the plan.

Mr. Homire: They have it stated, yes.

Mr. Nicodemus: I think in the record somewhere there is a statement to the effect that the valuation is so many dollars, as of a particular date, but I would have to check it to know.

(Discussion off the record.)

Mr. Coulson: I thought we agreed this morning that the Commission was going to consider the question of whether or not this after-acquired property clause was a self-executing clause. From that point of view I think we must have this valuation report in. But I think also it is a document of considerable importance in connection with this particular property, because property valuation is very

(Testimony of M. J. Curry.)

important in any of these properties where there have been lines constructed during the depression. I think that the Commission will need to consider this property [2196] report here. I would be in favor of its going in, much more than any of these documents we have put in this morning.

Mr. Swaine: We do not object if the parties want it.

Mr. Coulson: I would like it in.

Mr. Nicodemus: You are making the record, Mr. Examiner.

Examiner Wilkinson: Mr. Homire, if you want that document in, I should think that you could get copies very easily and offer them physically. The Examiner would prefer that you do that.

Mr. Homire: I meant to make clear that we would procure copies and offer them. We do not have them here today. Then if any part of it is deemed irrelevant—and probably a good deal will be—we will be perfectly willing to have that taken out.

I want to ask further that the record show some facts with regard to the common stock of the Denver & Rio Grande Western Railroad Company. Certificates representing 150,000 shares of that stock were pledged to the Reconstruction Finance Corporation by the Denver & Rio Grande Western Company directly. That company is now in bankruptcy.

Mr. Nicodemus: The pledge was made by the railroad company.

(Testimony of M. J. Curry.)

Mr. Homire: The pledge was made by the holding company. [2197]

Mr. Nicodemus: No, the pledge was made by the company, I think.

Mr. Homire: I have the pledge right here. It was made by the holding company. I am ready to offer this pledge in evidence. The holding company pledged these certificates. Is that what you question?

Mr. Nicodemus: No. I am just trying to ascertain what was done. My impression was that the holding company loaned the collateral to the railroad company and that the railroad company pledged it, but it may have been done directly.

Mr. Homire: I will offer in evidence a photostatic copy of the resolution of the Western Pacific Railroad Corporation authorizing the pledge of these certificates, together with a photostatic copy of the assignment by that corporation to the Reconstruction Finance Corporation. I have copies of it here.

Mr. Nicodemus: That is all right.

Mr. Homire: I think if the record does not show it we would like to have it stipulated that that stock represents one-half of the voting stock of the Denver & Rio Grande Western.

Examiner Wilkinson: You want to introduce it into the record?

Mr. Homire: Yes. [2198]

Mr. Swaine: No objection. I want this statement corrected.

Mr. Nicodemus: He has not finished it.

Mr. Homire: The total outstanding stock of the Denver & Rio Grande Western common stock, which is the voting stock, is 300 shares, and what is pledged with the Reconstruction Finance Corporation is one-half the total outstanding stock.

Mr. Nicodemus: A further correction:

The voting stock certificates are pledged, and not the stock. Is not that correct?

Mr. Homire: What you say is correct. This assignment shows exactly what is pledged. They are called stock trust certificates.

Examiner Wilkinson: The document which was just referred to is received as Exhibit 75.

(Exhibit No. 75, Witness Buckley, received in evidence.)

Mr. Homire: I also would like the record to show that the voting trust agreement under which that stock is held expired by its terms on the 31st of December, 1934, and that the District Court has held that the efforts to renew it were ineffectual, and that an appeal is now pending from that decree and that appeal is undetermined.

Mr. Nicodemus: And the case is in the United States Circuit Court of Appeals for the Eighth Circuit. [2199]

Mr. Homire: I also would like to have the same privilege that the Commission has allowed us as to the valuation of the Western Pacific applied to the valuation of the Denver & Rio Grande Western, 26

(Testimony of M. J. Curry.)

Valuation Report 733. We will obtain copies of that and produce it.

Mr. Nicodemus: I am somewhat alarmed by these valuation reports.

Examiner Wilkinson: Do you want to put in the valuation of the Denver & Rio Grande Western in this case?

Mr. Swaine: Oh, it has no relevancy at all.

Examiner Wilkinson: What is your basis for that, Mr. Homire?

Mr. Homire: It is part of the Reconstruction Finance Corporation's collateral.

Mr. Swaine: We do not purport to disturb the Reconstruction Finance Corporation's collateral except as an added claim against the Western Pacific.

Mr. Nicodemus: Mr. Homire's position is that there is a substantial equity in the stock of the Denver & Rio Grand Western. He wants to prove that by the valuation records.

Mr. Homire: I think Mr. Nicodemus is going a little far in stating what our position is, but we would like to have this valuation in to show whatever we think is relevant as to the value of the Denver & Rio Grande Western [2200] stock.

Mr. Swaine: I object to that.

Examiner Wilkinson: I right offhand fail to see where the rate-making value of the Denver & Rio Grande Western has anything to do with the Western Pacific, and particularly with this reorganization. And it is quite a bulky document.

(Testimony of M. J. Curry.)

Mr. Nicodemus: I think in each case if the valuation is put in it should be the figures and not the Valuation Reports.

Examiner Wilkinson: I think unless there are certain facts in these Valuation Reports outside of the final value figure or certain ultimate value figures it would be better if you could stipulate and agree as to what those figures are, rather than put the report itself in.

As far as putting in the Valuation of the Denver & Rio Grande Western, the Examiner is going to deny that request.

Mr. Homire: We will ask, then, that we be permitted to put in the final valuation figures on the property.

Examiner Wilkinson: Of the Denver & Rio Grande Western?

Mr. Homire: Yes, in lieu of the Valuation Reports.

Examiner Wilkinson: Is there any objection to this final figure?

Mr. Swaine: I object to its as irrelevant and immaterial. [2201] The plan does not purport to do anything to the Reconstruction Finance Corporation's interest in the Denver, it only purports to adjust its interest in the Western Pacific. This Denver stock is not owned by the Debtor, never came into the possession of the Debtor and has nothing at all to do with the interest of the Reconstruction Finance Corporation in the Western Pa-

(Testimony of M. J. Curry.)

else, except it is a separate thing for them to adjust in the reorganization proceeding,

Examiner Wilkinson: The Examiner is going to deny the request that the Denver & Rio Grande Western final value figure be put in this record.

Mr. Homire: We will note an exception, please.

I wanted to check just one or two of these docket numbers with Mr. Wood that he was talking about this morning, but if there is to be another hearing I can check up on those docket numbers and report at the next hearing if there is any correction to be made.

Examiner Wilkinson: Are there any questions of Mr. Buckley?

Mr. Coulson: I would like to reserve a right to cross examine the witness after an examination of the voluminous data presented through him; if such need of cross examination should develop, but I would like in a preliminary way at this time to ask him just one or two questions just to [2202] complete the record.

Examiner Wilkinson: Very well.

Mr. Coulson: Mr. Buckley, was the Chase National Bank of the City of New York trustee from and after January 1, 1932, of the General and Refunding Mortgage executed by the Western Pacific Railroad Company to the Chase National Bank of the City of New York as of the date January 1, 1932?

Mr. Swaine: Would it not be well there to begin by giving the date of delivery of the mortgage?

(Testimony of M. J. Curry.)

The Witness: You have so many dates there that I am not sure I follow that.

Mr. Coulson: I can give the date of execution. I do not know that I can give the date of delivery, but the mortgage apparently is executed as of the 29th day of February, 1932, executed on that day, and presumably delivered about that date.

Mr. Wood: That is not necessarily the date on which it was delivered.

Mr. Coulson: No, but I just wanted to have the record show whether the Chase is trustee under that mortgage and has been since its execution and delivery. That is my question.

The Witness: Yes, we were trustee under the General and Refunding Mortgage of the Western Pacific Railroad Company, [2203] but I have not in my mind the dates involved.

Mr. Coulson: Let me ask you also, Mr. Buckley, whether the Chase was from and after execution and delivery of the indenture dated as of July 1, 1930, between the Western Pacific Railroad Company and the Chase National Bank of the City of New York as trustee, the trustee under that indenture, that being the indenture which secures the 5 per cent gold debentures as to which you testified this morning.

Mr. Swaine: Oh, I object to the form of that question because it shows on its face that they were not secured. You should state the one under which they were issued.

(Testimony of M. J. Curry.)

Mr. Coulson: Under that indenture, I will always accept Mr. Swaine's corrections as to the form of my questions, and I accept that correction.

The Witness: We were trustee under that indenture.

Mr. Coulson: Are you not still trustee under that indenture?

The Witness: My recollection is that all of the bonds authenticated and delivered under that indenture, which in the aggregate were the amount authorized, five million dollars, were cancelled of record on the trustee's records.

Mr. Wood: That will show in those files which we have just had Mr. Buckley identify.

Mr. Coulson: Will you be prepared to make sure that the [2204] record shows wherein your responsibility ceased? Am I correct in understanding that the Chase National Bank of the City of New York, is still acting as trustee under the General and Refunding mortgage dated as of January 1, 1932, but is in the process of withdrawing as trustee?

The Witness: I have no direct knowledge of that. I have been busy on other things. I have heard that this morning, but of my own knowledge I do not know. I can ascertain, of course.

Mr. Coulson: Can you tell us whether in the handling of these various trust matters in your department there is any administrative distinction or distinction as to the administrative handling of matters arising under this first mortgage in which Mr. Cooper, a vice president of the Chase, was act-

(Testimony of M. J. Curry.)

ing as individual trustee, and these other documents under which the Chase was directly and as a corporation acting as corporate trustee?

Mr. Wood: Mr. Coulson, I think that question is a little bit ambiguous. Just what do you mean by "distinction"?

Mr. Coulson: I will ask him whether there was any distinction in the handling of these various trust matters in his department as between these three indentures as to which he has given testimony this morning.

The Witness: As to the first mortgage trust we were [2205] acting as agent under instructions from the trustees, the corporate trustee and the individual trustee. Of course, under the other two which you mentioned, the Refunding and General and the indenture of July 1, we were acting directly as trustee.

Mr. Coulson: Did that technical difference as between the acting directly and acting as agent for the California corporate trustee and the individual trustee make any difference in the method of handling the matters in your Corporate Trust Department, that is all I want to bring out. The records are kept in the same department of the Chase, are they?

The Witness: That is true, yes, sir.

Mr. Coulson: That is all I want to know.

I would like to reserve, however, the right to cross examine the witness as to some of these exhibits put in this morning if it should be deemed

(Testimony of M. J. Curry.)

necessary to supplement them by other documents in the possession of the trustee in its various capacities, or if it should be necessary to examine the witness further as a further basis for a motion to strike out any of these data.

Examiner Wilkinson: Are there any further questions at this time of Mr. Buckley?

Mr. Homire: We would like to make the same reservation as to further cross examination of the witness. [2206]

Examiner Wilkinson: You are excused subject to being recalled, Mr. Buckley.

(Witness temporarily excused.)

Mr. Wood, that completes your presentation this afternoon?

Mr. Wood: That completes our presentation this afternoon.

Examiner Wilkinson: Mr. Swaine, do you have anything further?

Mr. Swaine: Nothing further.

Examiner Wilkinson: Mr. Homire?

Mr. Homire: Nothing.

Examiner Wilkinson: Mr. Nicodemus?

Mr. Nicodemus: Nothing further.

Examiner Wilkinson: Mr. Coulson, do you have anything?

Mr. Coulson: If the Commission please, at the last hearing I asked for an adjournment to consider the

question as to whether a further plan would be submitted to the Commission on behalf of A. C. James Company, a secured creditor. I think perhaps I ought to say briefly on the record the factors that have led us to prepare and to submit today such a plan, in order that there may be no misconceptions or misapprehensions drawn from our submission of such a plan.

In the first place, the A. C. James Company is a [2207] secured creditor, classified as a separate class by the California court; in other words, holding 100 per cent of one class, so far as that tentative classification continues. If the court in California should modify its tentative classification and group all the secured creditors, the so-called junior creditors, in one class, the A. C. James Company would still have in excess of 10 per cent of that class, and of course it has in excess of 5 per cent of the total debt, so would be a creditor of the type who might originally have filed a petition under Section 77 if it had so desired.

There are already two plans before the Commission. There I think I ought to state briefly the justification for adding to the problems of the Commission by filing a third plan.

The first plan was filed as the plan of the Debtor company. There seems to be some doubt as to its paternity. Mr. Nicodemus has told us that it was prepared by Mr. Swaine's Committee of Institutional Bondholders, and presented by the company, while Mr. Swaine said he had merely remote control at best as to that plan.

When it was introduced, on behalf of A. C. James Company I expressed our approval of the general principle of the plan, which was in the case of this railroad company to maintain debt as debt; to protect the property [2208] from future difficulties in the case of a recurring depression of the type we have just been through, of transferring to contingent interest all of the fixed charges necessary, and to protect the property from similar embarrassments in the future.

That I think is a proper principle in the case of the Western Pacific if it is anywhere, because, as has been pointed out to the Commission, the property valuation here is something like \$145,000,000 and the total debt is, roughly, \$63,000,000, or less than 45 per cent of the property valuation.

I did object at the time we intervened as a creditor to certain phases of the company's plan which, while incidental, seemed to me quite important. It was at that time my intention to rely on pointing out to the Commission these incidental features of the company plan which seemed to me inconsistent with the public interest and with the interest of the property in the various creditors and security holders of the property, relying on the Commission's exercising its function of modifying the plan to the extent that might be necessary.

Since that time a second plan has been put in, on behalf of the Institutional Bondholders' Committee, which carries forward the features of the Debtor company plan to which I expressed objection on our

petition of inter-[2209] vention. Those objections I will not repeat here, if your Honor please, I think it had better be taken care of by brief, anyway.

But it also has what seems to us a further objection, of abandoning the principle on which the original plan of the Debtor company was framed and filed.

In view of the decision of the Commission to accept this plan that was presented to it by the Institutional Bondholders' Committee, I feel forced to present a plan and propose to present a plan today. I am the more willing to do that because it seems to me that in addition to the objections I have already expressed in our petition of intervention to the original Debtor company plan, both of these plans are open to a basic objection, or I might say to several basic objections, but one that I did not mention in the petition of intervention that they are not realistic in the sense of recognizing the problem that we all face in these railroad reorganizations under the Federal Revenue Act of 1936.

While we have in our tax laws a provision which puts an almost prohibitive tax on undistributed corporate surpluses and while that tax is applicable to railroad properties. I do not think any of us can soundly rely on financing future capital needs through a compulsory segregation of current income. The tax cost is far too high for the good of the [2210] property.

So in the plan which I propose to submit, I have, I may say, provided mechanics as best I could for

future senior and junior financing of capital needs.

That involves, of course, the creation of a new first mortgage in which the present mortgage bondholders do not participate as a channel of future senior financing. I have also made provision in another respect for a matter not covered by our petition of intervention; that is, I have endeavored in framing this plan to set up a reorganization committee or to provide machinery for setting up a reorganization committee which will be representative of all the security holders and creditors of the property rather than of the Institutional Bondholders only, because I think I have expressed here the view previously that I doubt whether the insurance company bondholders are representative of all the first mortgage bondholders, and that no plan of reorganization should be adopted—and I may say the two prior plans both contemplate that—under which the committee which is acting and has acted for the Institutional Bondholders should act as a reorganization committee for the property.

I do not intend any of this by way of argument, but I want to make two definite further qualifications in the light of which I am presenting the proposed plan. [2211]

In this plan I have placed the so-called junior creditors, namely, the Railroad Credit Corporation, the Reconstruction Finance Corporation, and the A. C. James Company, all of which creditors hold notes of the railroad company secured by General and Refunding Mortgage bonds, in a category

whereby I propose to give them obligations which are inferior to the obligations given the first mortgage bondholders as to the entire system. I do not want that taken, however, as a concession that Mr. Swaine is correct in the recitals to his plan submitted at the last session, that the first mortgage bondholders have a superior lien on all elements of property of the system, because I do not think it is accurate. I am afraid that my suggestion to Mr. Swaine that we could not at least accept his sweeping claims has been responsible for some of this testimony this morning. On the other hand, I do think it proper and just, and have so included it in the plan, that these first mortgage bondholders, who have an undoubted first lien as to the property conveyed to the trustee when that mortgage was executed; who make certain concessions as to interest, both the interest rate and unearned and undistributed interest, should have their sacrifice recognized by the other secured creditors' taking an inferior position, and I have so provided. But I do not intend it as a concession that that is their present [2212] ent position, and reserve the right to contend that it is not.

I might here interject and say that of course this plan is submitted wholly on behalf of the A. C. James Company. It is not joint in any respect, nor is it the result of suggestions made by either the Reconstruction Finance Corporation or the Railroad Credit Corporation.

I want to make one further statement, and that is that the plan which I propose to tender, while it is tendered by the A. C. James Company, which is designated as a junior creditor—accepting the characterization we have used in these proceedings, but with the qualifications that we have been laboring over today—while I am presenting it as a junior creditor, I do not want the Commission to understand or the parties to understand that it is framed solely with the desire to protect the position of the A. C. James Company as a so-called junior creditor. It is intended to represent what I feel is a realistic approach to this problem today, in the interest of all the creditors and all the security holders, taking into account the factual situation which we face now and recognizing some of these problems which arise out of the tax laws and other features.

And I want to say that because I do represent clients who hold upwards of \$6,500,000 of first mortgage [2213] bonds on the Western Pacific Railroad Company property, in part owned outright, but for the most part as collateral to debts, which debts, however, are in all cases in default, and where the face of the debts is far in excess of the value of the collateral, so for our present purposes they are in the same position as if they were owned outright.

I say that as to those first mortgage bonds, not only is this plan not tendered in derogation of their rights, but as to those creditors they would be quite willing to accept this plan as first mortgage bond-holders.

I present this proposed plan of reorganization on behalf of A. C. James Company under date of October 26, 1936.

Examiner Wilkinson: This plan of reorganization for the Western Pacific Railroad Company, proposed by A. C. James Company, will be received as Exhibit 76.

(Exhibit No. 76, by counsel, received in evidence.)

[Printer's Note: Exhibit 76 is here omitted as same is identical with "Plan of Reorganization for the Western Pacific Railroad Company proposed by A. C. James Co., a junior creditor" set out at page 101 of this printed record.]

Mr. Coulson: I think the Examiner made some suggestion in connection with the other plan that it also be filed in the office of the Commission. Is that correct?

Examiner Wilkinson: I believe so. We ought to follow the same procedure.

Mr. Swaine: May I ask Mr. Coulson a question or two? I assume he is presenting the plan. [2214]

Mr. Coulson: Yes, I have no witnesses.

Mr. Swaine: Mr. Coulson, Mr. A. C. James bears what relation to the A. C. James Company?

Mr. Coulson: He is the principal stockholder and is president of the A. C. James Company.

Mr. Swaine: What proportion of the stock of the Western Pacific Corporation is owned either by Mr. A. C. James or by corporations in which Mr. A. C. James is interested?

Mr. Coulson: I think that is already of record in this proceeding, but I will be glad to furnish the details precisely. You mean as to the holding company?

Mr. Swaine: No. What proportion of the holding company stock is owned either by Mr. James as an individual or by corporations in which Mr. A. C. James is the controlling stockholder?

Mr. Coulson: I will be glad to furnish the details in a statement which can be put on the record, as to those stocks. I think it is already in the record.

Mr. Swaine: It is a very substantial amount, is it not?

Mr. Coulson: Very substantial.

Mr. Swaine: Is it control of the Western Pacific Corporation?

Mr. Coulson: I do not know how you would define control in that situation. [2215]

Mr. Swaine: Is it a majority of the stock?

Mr. Coulson: No.

Mr. Nicodemus: There is nothing in the record about it at the present time.

Mr. Coulson: I think that in proving our claim for this junior creditor in the California court we stated that fact in our proof of claim. If we did not, I will see that it is put in the record here. There is no secret about it. It has all been of record a number of times.

Mr. Nicodemus: But it is not in the Interstate Commerce Commission record.

Mr. Coulson: I will be glad to furnish it.

Mr. Swaine: This plan, as Mr. Coulson has indicated, varies from the other two plans as to the posi-

tion of the new money. The Debtor's plan has the ten million dollars of new money provided alongside of 15 million dollars additional bonds under the same mortgage given to the existing first mortgage bondholders. The Institutional Bondholders' Committee plan provided for ten million dollars of bonds for new money alongside of ten million dollars of bonds to go to the existing first mortgage bondholders.

Mr. Coulson's plan, however, provides new money upon ten million dollars of bonds which are the sole issue under the new first mortgage.

I would like to ask Mr. Coulson if he proposes to [2216] introduce any testimony or make any statement as to the necessity for giving those bonds that lien in order to raise the money; and I call the Examiner's attention to the fact that I made the statement that the Institutional Bondholders that I represent are prepared in the present market to take those bonds of the character contemplated by the Institutional Bondholders' Committee. I believe that if the market conditions remain at all as they are at the present time those bonds can be sold, can be underwritten commercially. But I wonder if Mr. Coulson is to produce any evidence to show that a better bond is necessary in order to raise the money.

Mr. Coulson: I think I can answer Mr. Swaine's question without producing a witness, because I do not think any witness can testify usefully as to the matter.

I tried to point out in presenting this plan that I thought we all, if we were going to approach this reorganization question realistically now and in the light of the existent situation must provide a plan which will, and the Commission before it certifies a plan as being in the public interest must, take into account the fact that any railroad property may and probably will have future capital needs, and that they must be provided for. I do not think that any statement of Mr. Swaine's on the record or any statement of any witness who is familiar with [2217] the movements in the money market would remove the practical situation we face, that you must provide in any plan of reorganization just as soundly as you can a vehicle for senior financing which, in the light of changes in the money market, adverse changes, will constitute the most marketable security you can have.

Any dilution of that by existing debt which is frozen in the property seems to me quite inconsistent with this new problem we face of providing for all future capital needs by the issue of securities rather than by the aggregation of current income.

I hold the hope as a lawyer that the Commission may throw its weight in Congress in favor of removing the railroads from the application of the undistributed corporate surplus tax. I have no hope that the principle of the undistributed corporate surplus tax is coming out of our law as to other corporations.

Have I answered your question, Mr. Swaine?

Mr. Swaine: Yes. As I understand it, you base that provision not on any idea that it is necessary in respect to the present situation of the new money, but solely upon the idea that it is necessary to make your first mortgage adequate as a vehicle for future financing, if I understand your position. I only asked you whether you were going to introduce evidence, in order to determine [2218] whether that was your position. I will answer it in the brief.

Mr. Coulson: I am not going to introduce evidence, aside from your translation of my long statement. I am not going to introduce evidence on it, I think.

Examiner Wilkinson: As I understand, Mr. Coulson, you stand upon this record here as giving evidence which will justify and support the plan you propose?

Mr. Coulson: Yes. That is subject to the qualification that it is pretty hard to stand on the record, because none of us knows what is in it at the present date. But I stand upon it, subject to a review of the splendid information that has been poured out.

Examiner Wilkinson: Are there any further questions of Mr. Coulson?

Mr. Nicodemus: Not on behalf of the Debtor.

Mr. Homire: None for the Reconstruction Finance Corporation.

(Discussion off the record.)

Examiner Wilkinson: In view of the discussion off the record, the Chase National Bank will not have to produce tomorrow the documents which they promised to produce tomorrow, but will produce them on or before November 5.

This hearing is adjourned to November 5.

Mr. Wood: That also applies to the documents which the [2219] railroad company was to produce?

Examiner Wilkinson: Yes.

Mr. Nicodemus: As soon as copies are available they will be distributed, if in advance of November 5.

Examiner Wilkinson: Exactly.

We have put in the record here today exhibits beginning with Exhibit 45 and going to Exhibit 75. Of those exhibits there is only one copy, and that has gone into the record. The Examiner must have at least two copies of each one of those exhibits, and counsel are also entitled to a copy of those exhibits. The parties who are to furnish these exhibits will supply counsel with copies accordingly.

Mr. Swaine: Mr. Examiner, there is one other question:

At the last hearing when the matter of briefs was under discussion it was stated by Mr. Boyden—I do not remember whether it was on the record or afterwards—that only one brief would be permitted to each party. It seems to me that if that rule is to be adhered to the Examiner ought today to notify the only two interests that have not yet filed plans, namely, the Reconstruction Finance Corporation and the Railroad Credit Corporation, that they should at the hearing to be held next Thursday state what modifications they desire to be made in any or all of these plans, or put in their own plan. [2220]

I make that statement for this reason:

If suggestions of modifications as to the plan of the Institutional Bondholders Committee are made by the Reconstruction Finance Corporation and appear for the first time in the Reconstruction Finance Corporation's brief which is filed at the same time that the Committee's brief is filed, we will have absolutely no opportunity to answer those modifications. The presentation of those modifications will be entirely ex parte, and the briefs of the two parties in interest might go sliding right by each other without coming head-on.

Therefore, it seems to me that one of two things should be done, and I do not care which, the only purpose being to have both sides of all arguments presented:

Either all suggested modifications should be made at next Thursday's hearing and the Commission adhere to its rule that there is only one brief, or all parties should have opportunity to file a reply brief at some short interval after all the main briefs are exchanged. Thus both sides of any question that is first raised in the direct brief can be elucidated to the Commission.

Mr. Coulson: There is another suggestion that might be possible, Mr. Swaine, that is perhaps not practicable under Commission procedure. I suggest it only subject to that possible impracticability.

[2221]

Mr. Swaine's suggestion would meet the suggestions of modification that would originate with the various parties to the proceeding, but I have always read Section 77 as imposing a considerable duty of

initiative on the Commission; and Mr. Swaine will have no chance under this procedure to meet the modifications that the Commission might initiate.

If it were feasible for the Commission in making its findings and suggested plan of modification to let the parties consider the tentative findings and modifications—as is done many times under many judicial and administrative forum procedures—and then brief them if necessary, that would be far better than Mr. Swaine's suggestion.

Mr. Swaine: I understand that the Commission is receiving briefs to determine what plan it will suggest, and my purpose is that the Commission before it makes up its mind as to what plan it will suggest shall have the benefit of all the views of the parties on all possible suggestions, and not have them merely ex parte.

Examiner Wilkinson: The Examiner might say here that under the Commission's practice in Finance cases or in a docket such as this all briefs are filed at one and the same time, and the practice does not provide for reply briefs. [2222]

However, as to the Examiner's suggesting that the Reconstruction Finance Corporation or the Railroad Credit Corporation file plans or suggestions of a plan, the Examiner does not feel as if that is any of his business. Of course, the Commission would be very glad to receive and hopes that all the parties to this proceeding will give it all the assistance they can. If they have any statements to make, the Commission would be very glad to receive them.

Mr. Swaine: Mr. Examiner, my point is this, and it is perhaps a little technical under the Act:

The Act states that any party can suggest a modification at a hearing.

Examiner Wilkinson: Absolutely.

Mr. Swaine: If a modification is suggested at a hearing, namely, the next hearing, all the parties can brief that modification.

Examiner Wilkinson: Certainly.

Mr. Swaine: If, however, the first suggestion of the modification of any one of these plans is made in Mr. Willard's brief, in the first place, that is not a modification at a hearing suggested at a hearing, and in the second place, under the Commission's rules nobody else will have an opportunity to discuss that modification, so the Commission would not have the benefit of any discussion by the other parties. [2223]

All I suggest is that the Commission should do one of two things: Either be technical about the Act and require the modifications to be proposed at a hearing, as the Act says, which I shall not urge on it at all; or else not be technical about its own rules and permit any modifications which are suggested in the main briefs to be discussed in briefs to be filed, let us say ten days or two weeks after the date the main briefs are required.

Mr. Coulson: It seems to me Mr. Swaine is being unduly legalistic about this thing. I do not see why any of us cannot appeal to the wisdom of the Commission to make changes in any plans if the Com-

mission should adopt some other plan. Why can we not say in a brief that we think that if the Commission does not adopt this plan we favor, or if it adopts the other plan, it should be done with modifications? I will say frankly that if the Commission made the modifications in the Debtor company plan which I think should be made in the interest of the public and in the interest of a present-day application of rules of logic, I would be quite content with the company plan. Why can I not say that?

Mr. Swaine: I want you to say it. That is just the point I am arguing, that you shall be allowed to do it. But when you have suggested your modifications, I want a chance to answer them if they are modifications that I [2224] hear for the first time in respect to the committee plan, or if they are modifications that I hear for the first time in respect of the company plan. Because, I point out, unless that is done the party who proposes the plan will have no opportunity at all to discuss modifications which are suggested, and certainly the Commission wants the benefit of comment on modifications. A modification may be just as vital as an original plan, and it ought to be briefed just as thoroughly as the original plan.

Mr. Coulson: It seems to me Section 77 had that in mind when it put in the provision for coming back to the Commission after the Commission released the plan, with a motion for reconsideration and rehearing.

Mr. Nicodemus: It allows 60 days for that purpose.

Mr. Coulson: Yes, it allows 60 days for that purpose. I think we are being a little too technical in this proceeding, myself.

Mr. Swaine: I would like to state now that if any modification is proposed to any of the plans in any of the main briefs which have not been suggested up to date, I would like leave to file a short brief discussing the modification so that the Commission will have the benefit of the Institutional Bondholders' Committee's views on any modifications that are suggested up to that time.

Examiner Wilkinson: Of course, the Examiner cannot very [2225] well rule specifically on a request such as that.

Mr. Swaine: I understand you cannot.

Examiner Wilkinson: I can repeat that if there are any parties to this proceeding who from a study of the evidence and the record desire to suggest modifications of any one of the three plans, before the record is closed is the time to suggest them. That is all the Examiner can say.

Mr. Willard: That does not mean that we would be foreclosed from suggesting them in a brief?

Examiner Wilkinson: I am not attempting to pass at all upon what is going to happen hereafter. I am merely talking about this record here.

Mr. Willard: I do not think you can regiment the briefs of opposing counsel.

Mr. Swaine: I do not want to regiment the briefs, I merely want a right to answer new material that has not been brought up before.

Examiner Wilkinson: Mr. Swaine's request will be presented to the Division or the Commission in the event briefs are filed subsequently which do propose modification of the plans. That is all the Examiner can say.

Mr. Swaine: That is all I can ask. I think it would be helpful if the other parties could suggest their modifications now. Then we would get to grips with the problem [2226] instead of dealing in a lot of generalities.

Examiner Wilkinson: The hearing is adjourned until November 5.

(Whereupon, at 3:30 o'clock p.m., an adjournment was taken until 10 o'clock a.m., Thursday, November 5, 1936.) [2227]

Before the
Interstate Commerce Commission
Finance Docket No. 10913

WESTERN PACIFIC RAILROAD)
COMPANY REORGANIZATION.)

Ante Room A, I. C. C. Building,
Thursday, November 19, 1936.

Hearing in the foregoing matter was resumed at 10 o'clock, a.m., pursuant to adjournment.

Before:

Examiner Harvey H. Wilkinson.

Appearances:

The same as heretofore noted.

Additional Appearances:

H. C. McCollom, and Orrin G. Judd, 1 Wall Street, New York, N. Y., appearing for Irving Trust Company, as Successor Trustee under General Refunding Mortgage of Western Pacific Railroad Company. [2229]

PROCEEDINGS

Examiner Wilkinson: Are you ready to proceed, gentlemen?

Mr. Nicodemus: Mr. Examiner, since the last hearing the Irving Trust Company has been substituted in the place of the Chase National Bank of the City of New York as Trustee under the Western Pacific Railroad Company General and Refund-

ing Mortgage dated as of January 1, 1932.

I should like to offer in evidence the instrument of appointment executed by the railroad company pursuant to the terms of the General and Refunding Mortgage, and the instrument executed by the Irving Trust Company accepting the trust. These documents have been circulated among counsel, with possibly one or two exceptions which we can take care of now.

I offer the copies of the originals.

Examiner Wilkinson: Are there two separate documents?

Mr. Nicodemus: There are two separate documents, which may go in as one exhibit or two exhibits, according to the desire of the Examiner.

Examiner Wilkinson: As long as they pertain to the same thing, one exhibit number, I think, will be sufficient.

Mr. Nicodemus: All right. [2231]

Examiner Wilkinson: They will be received as Exhibit No. 77.

(Exhibit No. 77, By Counsel, received in evidence).

Mr. Nicodemus: I understand that counsel representing the Irving Trust Company are present, and perhaps they would like at this juncture to enter an appearance.

Examiner Wilkinson: They should.

Mr. McCollom: H. C. McCollom and Orrin G. Judd, appearing for Irving Trust Company, as

Trustee under the General and Refunding Mortgage.

I shall like to present at this time the petition of Irving Trust Company as Trustee for intervention.

Examiner Wilkinson: This is a petition for general intervention?

Mr. McCollom: Yes.

Examiner Wilkinson: Do any of the parties have anything to say in regard to this petition?

Mr. Nicodemus: The Debtor interposes no objection to the intervention.

Mr. Swaine: The Institutional First Mortgage Bondholders Committee has no objection to the intervention.

Examiner Wilkinson: The petition will be granted.

Mr. McCollom: Copies are being distributed among counsel here, and the proper number will be filed with the Commission. [2232]

(The petition of the Irving Trust Company for leave to intervene was received and granted.)

(Discussion off the record.)

Mr. McCollom: The Examiner will note that the appointment contains as a last page the acknowledgment of the receipt thereof by the Irving, and that the acceptance of the appointment by Irving contains as a last page acknowledgment of the receipt thereof by the railroad company, just completing the substitution. In other words, the appointment has to be delivered to the railroad company under the terms of the mortgage.

Mr. Nicodemus: At the last hearing it was understood that from time to time during the pendency of this proceeding we would furnish operating results by months. Since the last hearing, we have received the accounts for the month of September. Two copies have been furnished to the Commission, and copies have been circulated among counsel. I would like to offer that statement in evidence.

Examiner Wilkinson: That will be received as Exhibit 78.

(Exhibit No. 78, by Counsel, received in evidence.)

Mr. Nicodemus: Examiner Boyden requested the debtor to prepare and file as an exhibit a corporate history of the debtor. Such a history is now in the course of [2233] preparation, but due to the precedence required by this large order of Exhibits, we have been unable to complete that. We expect to have it available for filing within two weeks. If the hearing is adjourned before that date I ask leave to file it as a supplementary exhibit.

Examiner Wilkinson: There will be no objection to that, I assume.

Mr. Nicodemus: I am going to say for the information of counsel that it is a statement somewhat similar to the corporate history, and its preface is the valuation report. It simply states the origin of the company and its subsidiaries, and traces them through to date.

It is something designed to be helpful to everybody.

The Debtor's case was closed at the last hearing. We close it again.

Examiner Wilkinson: You have nothing further at this time.

Mr. Wood: Mr. Examiner, at the last hearing with Mr. Curry and Mr. Buckley on the stand, a number of exhibits were produced which were not offered in evidence at that time because no copies were available. We expect to offer those exhibits in evidence this morning.

There were also a number of exhibits that were actually offered in evidence, but as to which the number of copies required was not available. We now have copies here [2234] for the Commission, and I think the parties have received all but a few.

I will call Mr. Curry.

Examiner Wilkinson: Have copies of the exhibits which were received at the last hearing been circulated to counsel?

Mr. Wood: With the exception of the few orders of the Interstate Commerce Commission, I think all have been circulated, and I have copies here to supply those which have not been.

Examiner Wilkinson: Suppose we take up during the recess the distribution of the copies which have already been received in evidence, rather than distributing them at the present time, if it is your purpose right now to distribute those.

Mr. Nicodemus: There are only four or five.

Mr. Wood: I was particularly making a preliminary statement as to what I planned to do, and I was going to call Mr. Curry for the purpose of offering in evidence a number of documents which he produced at the last hearing, but which were not formally tendered.

Examiner Wilkinson: In connection with this line of testimony, the Examiner might admit that he was taken more or less by surprise at the last hearing that the question of this issue was going to be raised. He would [2235] like to have on the record now the position of the Trustee under the First Mortgage as to the relevancy of their claim in connection with this line of testimony. Would you mind making a statement, Mr. Wood?

Mr. Wood: Mr. Examiner, the first mortgage Trustee was informed that claims were being asserted or would be asserted by the General and Refunding Mortgage Bondholders. The exact nature of those claims was not known to us, except that we were told that a claim would be made to a lien, either prior to or pari passu with the first mortgage on the Northern California extension and the first mortgage Trustee's claim that the First Mortgage is a first lien on the entire northern California extension.

I believe that at the last hearing a question was raised as to the priority of the first mortgage on certain pledged securities, and I believe that testimony was offered as to what securities were pledged with the First Mortgage Trustees and what securi-

ties were pledged with the general and refunding mortgage Trustees.

Of course, we claim a first lien on all securities actually pledged under the First Mortgage.

Mr. Nicodemus: You mean actually deposited under the First Mortgage, or pledged?

Mr. Wood: Delivered and held by the Trustees under the [2236] First Mortgage.

Mr. Swaine: May I add something on behalf of the Institutional Committee?

The plan proposed by the Institutional Committee made the statement that all other classes of securities of the railroad company other than equipment obligations are entirely junior in lien to the first mortgage.

That plan is predicated upon that thesis, that the First Mortgage is a first lien upon everything. I made an oral statement that I found in respect to certain negligible stocks of subsidiaries that was in error and the record shows what those stocks are and also shows the value of those stocks.

The state of the record otherwise is this, that as to the granting clauses of the First Mortgage, as I understand they do not expressly describe the northern California extension. The granting clauses of the general and refunding mortgage do expressly describe the northern California extension. There is no supplemental indenture to the First Mortgage expressly describing the northern California extension. Therefore, this testimony is relevant to show how the northern California extension became sub-

ject to the lien of the First Mortgage. Our thesis is that the Interstate Commerce Commission must know the liens of the respective securities upon the [2237] property of the debtor before it can possibly determine whether a plan is fair or not.

Examiner Wilkinson: But in that connection, only as to whether a plan is fair and equitable, as to whether the different classes participate equitably in the plan and not for the purpose, of course, of having the Commission as a matter of law adjudicate the rights between these mortgages.

Mr. Swaine: That is right. Section 77 requires that the plan shall, of course, be fair and equitable, "affords due recognition to the rights of each class of creditors and stockholders, does not discriminate unfairly in favor of any class of creditors or stockholders, and will conform to the requirements of the law of the land regarding participations of the various classes of creditors and stockholders."

In order to determine that question the Commission has to know whether a given mortgage is a first mortgage or a third mortgage.

Examiner Wilkinson: In these proceedings we are all more or less at a disadvantage. We do not have any pleadings and do not draw any particular issues or join any issues. But it occurred to the Examiner subsequent to the last hearing that so far as the record is concerned there is really nothing in the record to show [2238] that any other parties to this proceeding controvert the position that the First Mortgage is a prior lien on all the property,

other than by inference. I think Mr. Coulson stated that he did not agree with that. But so far as the record is concerned, he does not take any position here of contending that the bondholders under the first mortgage are not entitled to preferential treatment. I would think that if the other parties to the proceeding are contesting preferential treatment, they should so state here on the record.

Mr. Willard: The Railroad Credit Corporation has contested the position of the Institutional Bondholders as set out in their plan, to effect that, as urged here by Mr. Swaine, a first lien was claimed on all the property of the Western Pacific. We believe and we had reason to believe that there was some property that was subject to a first lien of the Refunding and General, and that if the First Mortgage had any claim at all on that property it was junior to the Refunding and General.

Mr. Swaine: What is that property, to be specific?

Mr. Willard: There are those stocks that you mentioned the other day. Now, we do not know. We have relied on the trustee of the general mortgage to develop that point. We have tried to be of some assistance, but there has been a shift of trustees recently without [2239] notice to us until after it was accomplished; and we have not been able to develop that point fully. It has not seemed to us that we had any obligation to point out specifically at this time what property was subject to the general mortgage as a first lien and on what

property that mortgage had merely a second lien.

Examiner Wilkinson: But it is the position of the Railroad Credit Corporation that the bondholders under the first mortgage are not entitled to preferential treatment in this plan, using the word "preferential" as we all understand?

Mr. Willard: As to all property.

Examiner Wilkinson: As to all property.

Mr. Willard: Of course, that goes to the point of determining the value of securities held under pledge by the Railroad Credit Corporation to secure its claim against the Western Pacific. That is all that is important; also, as Mr. Swaine has pointed out, in order to determine what our position is and should be under any plan of reorganization.

Examiner Wilkinson: Do you care to state here now that of the three plans which have been put in the record, all three, as I recall it, give preference to the First Mortgage bondholders—the Railroad Credit Corporation objects to that treatment?

[2240]

Mr. Willard: Yes, sir, certainly to the first two plans. Our objections are not so strong as to the plan submitted by Mr. Coulson at the last hearing. We think that plan is fairer, more practical than the other two, having that in mind.

Examiner Wilkinson: The Examiner is laboring here trying to get a reasonable basis for going along with this line of testimony, inasmuch as the Commission cannot adjudicate these rights. But as the Examiner sees it under the Act, if there is a contro-

versy and a question here as to the priority of these mortgages which does have a bearing on whether a plan is fair and equitable, inasmuch as the plans which have been submitted do give preference to the First Mortgage Bondholders, if the other parties to the proceeding object to that, then the Examiner sees that this evidence is relevant and material.

Mr. Willard: I think it will be necessary to develop the facts before we can tell precisely what claim should be made. We are not alone. We are not the only holders of general and refunding bonds. We are a minor holder; the mortgage trustee is represented by counsel.

Examiner Wilkinson: Perhaps counsel for the General and Refunding Mortgage would care to make a statement here as to the position of the Trustee under that mortgage. [2241]

Mr. McCollom: We take the position that it is perfectly plain that the first mortgage is not the prior lien on all property. I think, to make the situation a little clearer, the whole sentence should be read which Mr. Swaine started to read.

Since all other classes of securities of the railroad company other than the equipment obligations are entirely junior in lien to the first mortgage, obviously any stock so allotted to the present First Mortgage Bondholders, whether for principal or for accrued interest, should have rights as to both assets and income prior to those of the stock allotted to such other creditors and stockholders of the railroad company.

In other words, while I suppose no one would dispute that on the main, original line of the railroad, which is described in the mortgage, the First Mortgage has the prior lien, nevertheless there may well be other substantial items of property as to which the general mortgage is the prior lien. A plan which proposes that as to all securities proposed to be issued the first mortgage shall have priority is naturally objectionable, because it is based upon a premise which is plainly wrong.

As to the extent to which the general mortgage is prior, I do not think there is anyone at the present moment who can define the property as to which the general mortgage [2242] is prior. That is the reason why at the conclusion of the hearing I am going to ask the Examiner for an adjournment of the hearing in order that we may consider the situation in respect of other property. It just so happens that at the present moment there have been pointed out two items of property in respect of which the General Mortgage is claimed to be prior.

I should hope that it might work out—although I am speaking entirely out of turn; I am a stranger here—that the plans might be adjusted, perhaps, as between reasonable people, without the necessity of encumbering this record later with a long batch of testimony with reference to comparative priority of mortgage liens.

Examiner Wilkinson: That is what the Examiner is trying to do at the present time, of course.

Mr. McColloni: It might well be that during the

adjournment which I am going to request that perhaps will come about, but in the meantime with a plan standing before this Commission based upon the assumption that the first mortgage is the prior lien upon all property, we can do nothing but dispute that to the best of our ability.

Mr. Swaine: May I state that we have conceded that with respect to stocks which were identified by Mr. Curry and as to which the record is clear, as to the earnings [2243] and companies concerned and the book values, the First Mortgage is not a first lien on those few stocks. We say that our statement in the Plan is substantially true anyway, that those things are of negligible importance.

The only item as to which there is any substance in dispute is the northern California extension, and that dispute arises by reason of the fact that the granting clauses of the First Mortgage did not specifically describe it because it was not in existence. Therefore, then, it seems to me that this testimony is relevant and really should have been introduced by the Debtor. In all of these proceedings that I have had anything to do with up to date the Debtor came and made proof of the liens of the various securities as the basis upon which its plan was founded and upon which the Commission should determine any plan. It seems to me that it was part of the Debtor's proof here to establish that notwithstanding the granting clauses did not describe this, nevertheless the Debtor had drawn down bonds for the purpose of building a line, and there-

fore the northern California line did pass under the first mortgage by reason of the specific provisions of the mortgage. The Debtor having failed to do that, the First Mortgage Bondholders Committee called on the Trustee to do it, and all we are trying to do is to establish that *prima facie fact*.

[2244]

Examiner Wilkinson: As the Examiner sees it, the other parties to the proceeding have the right at any time during the proceedings to controvert any of the allegations in any of the plans; still, the institutional bondholders plan and the Debtor's plan have been in this record for many months, and it was not until recently that any question has been raised along this line. However, since the parties have stated that they do contest this, the Examiner will let the type of proof here go ahead. You may proceed.

Mr. McCollom: I should just like to say this, Mr. Examiner, that it is hardly appropriate for Mr. Swaine, representing the First Mortgage Bondholders, to say that the only question—perhaps he did not say that; perhaps he said that the only question that has been raised up to date is the question of the lien on the stock pledged with the General Mortgage trustee and the lien of the northern California extension. But I do not know at the moment, having been in this case only a few days, whether there may not be other very substantial items of property.

Examiner Wilkinson: That will be taken for granted. The statement of Mr. Swaine will not bind the general mortgage trustees.

Mr. Wood: Mr. Curry, will you please take the stand? [2245]

(Discussion off the record.)

M. J. CURRY

testified further as follows:

Direct Examination

Q. (By Mr. Wood) Mr. Curry, at the last hearing on page 343 of the record you were asked to produce an application to the Interstate Commerce Commission for authority to construct the northern California extension. That was dated February 8, 1929.

Do you have those documents in sufficient number so that we can distribute copies?

A. Application to the Reconstruction Finance Corporation for a loan?

Q. No, application to the Interstate Commerce Commission dated February 8, 1929. It is Finance Docket No. 7440.

A. Yes, I have such a document here.

Q. This is in Finance Docket No. 7440, in the matter of the application of the Western Pacific Railroad Company under paragraphs (18) to (21), inclusive, of Section 1 of the Interstate Commerce Act for a certificate of public convenience and

(Testimony of M. J. Curry.)

necessity for the construction and/or acquisition of a new line of railroad in the counties of Plumas, Lassen, and Modoc, California." A. Correct.

Mr. Wood: I will offer that in evidence, and ask [2246] leave to substitute a copy for the original.

Do you have the necessary copies for the Commission, and you have already distributed copies to counsel, I understand.

The Witness: That is right, I have. I have the necessary copies for the Commission, and counsel have already been furnished with copies.

Examiner Wilkinson: The document referred to will be marked Exhibit No. 79.

(Exhibit No. 79, Witness Curry, received in evidence.)

Q. (By Mr. Wood) You were asked to produce a return to the questionnaire of the Interstate Commerce Commission, dated September 11, 1929, page 344 of the record.

Mr. Nicodemus: I want to object to the return to the questionnaire. I do not see how this bears on the lien of the mortgages. It is a large, voluminous document. It is not going to be helpful to anybody in the case.

Mr. Wood: It is part of the record showing the facts on which the claim to a lien rests.

Mr. Nicodemus: If you pick out the facts, winnow the wheat from the chaff, it will be all right. I do not think there is anything in there that you would want to offer as an independent fact. I object.

(Testimony of M. J. Curry.)

on the ground it is irrelevant and immaterial, and voluminous.

Mr. Swaine: The part that we consider relevant is the [2247] statement as to how they intend to finance the building of the California extension.

Mr. Nicodemus: Do you mind having the witness read that into the record, and withdraw the exhibit?

Mr. Swayne: I have no objection to identifying the pages.

Mr. Nicodemus: This is like proving a word in the dictionary by offering the whole dictionary.

Mr. Swaine: It is question 29. It begins on page 22.

The Witness: "Question 29.

"The manner in which it is proposed to finance construction and equipment, and the kind and amount of securities to be issued, and the approximate terms of their sale; to what extent funds for financing are available, and which, if any, of such securities will be underwritten by industries to be served by the proposed line."

Mr. McCollom: Mr. Examiner, I must say that I join in the objection, for this reason, that this is a statement of what the railroad company proposes to do. It does not seem to me that it is of any materiality. It is a question of what happened rather than what was proposed to be done, it seems to me.

Examiner Wilkinson: It is true to a certain

(Testimony of M. J. Curry.)

extent, but you have to remember that this is not a court and we are not going to attempt to adjudicate this matter. This [2248] matter goes to the question of the fairness and equitableness of the plan. The Examiner sees that certain statements by the Debtor in these applications, while perhaps not competent or relevant or material in court, would be here. So you may proceed.

Likewise, if you can cut it short, we would appreciate that.

Mr. Coulson: Mr. Examiner, have you not stated the root of this thing, though, when you say that all you are interested in is the issue of whether the proposed plans are fair and equitable? I take it that the Commission is not going to try to decide in these 77 proceedings all the minute and detailed issues as to the relation of various liens to spur lines and additions and equipment that might necessarily be decided by the court in a foreclosure proceeding. It is quite impossible.

I was as much surprised at the last hearing as the Examiner was to see an enormous mass of material brought before the Commission, solely because some of the creditors who were concededly junior creditors as to the main property of the road protested and said they would not accept the extreme claim that appeared in a plan filed with the Commission at the hearing immediately prior to the last hearing, that the first mortgage represented

(Testimony of M. J. Curry.)

a first lien on everything from the pencils on the [2249] president's desk down.

Mr. Swaine: Are you prepared to concede that it is a first lien on the northern California extension? If you are, —

Mr. Coulson: May I finish, Mr. Swaine?

We said we would not concede that. It is absurd that it should be conceded, and I think there is a certain absurdity in a representative of a group of first mortgage bonds trying to prove that a first mortgage is a first lien on everything the railroad has, because it cannot be done and we all know it.

We raised the question, yes, and I think it was a proper question to raise, to say that we would not concede that extreme claim. But here we are piling an enormous mass of documents into a record which is necessarily a large record, when all you need to know is that there is some doubt about whether all the property of the Western Pacific is under the First Mortgage. Everybody admits it is a prior lien on the main line. If we are going to attempt to prove its relationship to every spur and every bit of equipment we will be here for two years.

As to Mr. Swaine's offering this testimony admitting that the after-acquired property clause of the First Mortgage comes into a question as to the northern [2250] California extension, I think if you inspected that, — I think the record already shows it—as to the amount of First Mortgage

(Testimony of M. J. Curry.)

money that was spent on the northern California extension, and the amount of junior creditor money that was spent on the northern California extension, you have everything the Commission needs to decide whether the plans are fair and equitable.

[2251]

I think this enormous mass of documents cluttering up the record is all wrong.

Mr. Swaine: I am rather surprised to hear Mr. Coulson refer to the Northern California extension as a mere spur.

Mr. Coulson: I am not referring to it that way.

Mr. Swaine: The testimony is, it is a very important piece of line. I will concede at once that if the first mortgage is not a lien upon the California extension, then the junior creditors are entitled to better treatment than any of these plans have given them, and I would expect some one of them to insist upon better treatment; and the Commission still has the power to bring down a plan.

So it seems to me that the Commission cannot properly function under Section 77 unless it has testimony showing how serious the dispute is.

It is our position that the dispute is purely frivolous. It is built up merely to create an assumed air of uncertainty, and we want to lay the ghost.

Exam. Wilkinson: As long as any parties to the proceeding take the position that the first mortgage bondholders are not entitled to preferential treatment along the lines as proposed in the plans,

(Testimony of M. J. Curry.)

I cannot see how we can fail to go ahead with this line of testimony, because the Northern California extension is a very important part of the Western Pacific property. [2252]

Q. (By Mr. Wood). Mr. Curry, will you proceed with your reading of that?

A. "Answer 29."

Examiner Wilkinson: Just a moment. As I understand, now, what you are proposing to do is read a certain extract from this document which has been identified, rather than offer the document itself?

Mr. Wood: Exactly.

Mr. Nicodemus: Correct.

Examiner Wilkinson: Is there any objection to that?

(No response.)

Proceed.

The Witness: "Answer 29:

"It is proposed to finance the proposed construction as follows:

"(a) To the extent of fifty per cent of the cost of construction, but not exceeding \$5,000,000, by the issuance and sale at par and accrued interest of applicant's debenture bonds or notes maturing January 1, 1950, and bearing interest at the rate of 5 per cent per annum, payable semi-annually, redeemable in whole or in part at par at option of applicant upon any interest date on thirty days' notice. It is proposed to

(Testimony of M. J. Curry.)

sell said bonds or notes under the provisions of the Clayton Act. [2253]

"(b) As to the remainder of the cost of construction:

"It is proposed to finance the same from applicant's cash assets insofar as the same may be available for such use at the time of construction; and to the extent that funds in the treasury of applicant are not available therefor, by the issuance and sale of applicant's bonds under its first mortgage of date June 26, 1916, with a maturity date of March 1, 1946, in substantially the form of the existing bonds outstanding under said first mortgage.

"(c) As to financing the acquisition of necessary equipment:

"Insofar as additional equipment of applicant will be necessary by reason of the operation of the proposed line, it is proposed to finance the cost by the use of treasury funds to the extent such funds are available for that purpose at the time of the acquisition of the same, and to supplement the amount of funds so available insofar as may be necessary by equipment trust certificates and/or the issuance and sale of applicants' first mortgage 5 per cent bonds. It is not possible at this time to state the amount of securities so to be issued or [2254] the approximate terms of their sale.

"No securities to be issued will be underwrit-

(Testimony of M. J. Curry.)

sten by any industry or industries to be served by the proposed line."

Mr. Wood: At page 345 of the record and again at page 356, Mr. Curry, you were asked to produce a letter from A. C. James Company to the Western Pacific Railway Company dated May 14, 1929, and that was introduced as exhibit 45. Do you have the copies available for the Commission?

(Discussion off the record.)

Mr. Wood: Perhaps, Mr. Examiner, we could proceed and Mr. Curry can find those during the recess.

The Witness: Yes; I shall endeavor to find it. It must be here. I do not seem to be able to pick it up right away.

Mr. Wood: And No. 4 on my list, Mr. Curry, is the amended application to the Commission for authority to construct the Northern California extension, dated August 8, 1929. That is referred to on page 356 of the record.

For the purpose of shortening the record on this exhibit, Mr. Examiner, I will ask Mr. Curry what change this application made in the proposed line, as distinguished from the one which was introduced as exhibit 79.

That shows on the map which is annexed to the exhibit. [2255]

The Witness: This is a joint application by the Great Northern, in the matter of application by the Great Northern and the Western Pacific—

(Testimony of M. J. Curry.)

Mr. Swaine: Can it not be stipulated by all counsel that the only relevant change made by this application from the application that is already in evidence is that the point of connection of the new line will be changed from Lookout to Bieber, and there was added to the line a line from Hambone to Siskiyou.

Mr. Nicodemus: We will make that stipulation if you will leave out the word "relevant."

Mr. Swaine: All right. In other words, it slightly changed the line. That is our only purpose in wanting it.

Examiner Wilkinson: Are the other parties willing to agree to that?

Mr. McCollom: I am in no position to agree to anything of that nature because I have not studied these documents, but I should think that Mr. Curry perhaps would know that to be the fact; or if Mr. Nicodemus knows it to be the fact, I am satisfied.

Mr. Nicodemus: I believe it to be the fact.

The Witness: I believe it to be the fact, so stated in this document here.

Mr. Wood: I originally had planned to bring it out by [2256] Mr. Curry's testimony, but I am perfectly willing to stipulate it.

Mr. Nicodemus: That is the correct way to develop the record, in my judgment; bring it out by the witnesses and not by the documents themselves.

Examiner Wilkinson: As the Examiner takes it, then, the parties are in agreement as to that statement?

(Testimony of M. J. Curry.)

Mr. Swaine: That is the fact, is it not, Mr. Curry?

The Witness: To the best of my belief, yes.

Mr. Swaine: You have a basis for that belief in having read the document?

The Witness: Yes. I am reading it now. Yes, I think that is a true statement.

Mr. Swaine: All right.

Mr. Wilkinson: Proceed.

Q. (By Mr. Wood). Mr. Curry, do you have exhibit No. 46? That is the letter from A. C. James Company, dated June 19, 1929. It is No. 5 on by list, referred to at page 358 and 360 of the record.

That is already in evidence. Will you supply the Commission with the necessary copies?

A. Very well.

(Producing copies)

Q. Will you please produce the application to the Interstate Commerce Commission for authority to issue \$5,000,000 [2257] principal amount of debentures? It was dated October 28, 1930, and was referred to on page 360 of the record. It is Finance Docket 8548.

A. I have this document in my hand. This is application of the Western Pacific Railroad Company for authority to issue securities, \$5,000,000 of 5 per cent gold debentures, Finance Docket No. 8548, dated October 28, 1930.

Mr. Nicodemus: Can you select from this the part that you think is relevant? I call attention to

(Testimony of M. J. Curry.)

the fact that it has a number of exhibits which are already in the record in other connections.

Examiner Wilkinson: This exhibit is not in the record.

Mr. Nicodemus: I say, it has exhibits, for instance, the debenture mortgage, annexed to it. It is going in as an independent exhibit.

Mr. Wood: I am willing to eliminate that part of it.

Mr. Nicodemus: I want to see if we cannot eliminate 99 per cent.

Mr. Swaine: Cannot all the exhibits be eliminated? Is not the debenture indenture already in?

Mr. Wood: That is attached to it. The other exhibits consist of the balance sheet and exhibit VIII, which is the resolution of the executive committee, which I think are important.

Mr. Nicodemus: They are not in. I think you put in a [2258] series of executive committee resolutions.

Mr. Swaine: I think the only thing that can be omitted from this is exhibit VI and the balance sheet.

Mr. Wood: I offer this in evidence, with the exception of the two exhibits which Mr. Swaine has mentioned.

Examiner Wilkinson: The document will be received as exhibit No. 80.

(Exhibit 80, Witness Curry, received in evidence.)

(Testimony of M. J. Curry.)

Q. (By Mr. Wood). Mr. Curry, will you please produce your affidavit dated March 2, 1931, and the documents which accompany it, relating to bids for the \$5,000,000 principal amount of debentures? That is exhibit 48, so we will skip that for the moment. What I want is the application to the Interstate Commerce Commission for authority to issue \$5,000,000 principal amount of first mortgage bonds, dated September 9, 1930, referred to at page 377 of the printed record.

A. This is the application, "In the Matter of the Application of the Western Pacific Railroad Company for authority to issue securities (\$5,000,000 additional first mortgage 5 per cent bonds). (Northern California Extension.)"

It is Finance Docket 8473.

Mr. Swaine: For the purpose of shortening the record, we suggest that the balance sheet constituting the last six pages be omitted from the record.

[2259]

Mr. Wood: Exhibit 5 is the balance sheet.

I offer this in evidence. We will take out the balance sheet, which appears as exhibit 5 of this document.

Examiner Wilkinson: Is there any objection by any of the parties to the deletion of the balance sheet?

The document will be received as exhibit 81.
(Exhibit 81, Witness Curry, received in evidence.)

Mr. McCollom: Mr. Examiner, it is my under-

(Testimony of M. J. Curry.)

standing that on the record at the present time there is an understanding that these various documents which have been offered, insofar as they might contain opinions of counsel or of the railroad company, for example, as to priority of the first mortgage, are not to be taken as binding any party; that these documents are put in merely for factual purposes.

Just having come into the case, I should like to be understood that any of these documents, so far as they express opinions or conclusions, are not to be taken as binding upon us in any way in that respect.

Examiner Wilkinson: The Examiner has stated that the Commission will not attempt to adjudicate this question. In the first place, if they did, it would not be binding upon the other parties. We all know that.

Mr. Swaine: We want to show only the fact of the opinion and what we shall argue from it, that it was an [2260] opinion that was caused to be given to the first mortgage trustee by a company under the influence of Mr. A. C. James, who bought the other securities, and therefore it also operates as an estoppel against Mr. A. C. James, who participated in causing this opinion to be given.

We want just the fact of the opinion in evidence.

Examiner Wilkinson: Pardon me just a moment. There are other parties besides A. C. James.

(Testimony of M. J. Curry.)

Mr. Swaine: We concede that if there is anyone here who takes anything free of any equity against Mr. A. C. James, who has rights higher than Mr. A. C. James, on the ordinary law of negotiable instruments they of course would not be bound by the estoppel. We want to found the estoppel as against him.

Mr. Wood: I take it that all we are doing is offering the facts for the Commission, and nothing else.

Mr. CeCollom: I had so understood.

Examiner Wilkinson: As bearing upon the fairness and equitableness of the plan. That is what this testimony goes for.

Q. (By Mr. Wood). Mr. Curry, will you produce the application to the Reconstruction Finance Corporation for a loan of \$799,000, that is dated February 5, 1932?

Mr. Nicodemus: Mr. Examiner, before that is offered, I [2261] should like to ask counsel for the institutional bondholders whether he will segregate the relevant from the irrelevant matter in this document.

Mr. Wood: We have not come to that yet, Mr. Nicodemus.

The Witness: This is a different one.

Mr. Groome: This apparently is part of the application, but there is something that preceded it.

Mr. Nicodemus: This is apparently worse than I thought it was. There are going to be two instead of one.

(Testimony of M. J. Curry.)

Mr. Wood: We thought that this was the document until we discovered that Mr. Curry had something that preceded it.

(Discussion off the record.)

The Witness: I have here a copy of application and letters correcting inaccuracies therein, dated February 5, 1932, to the Reconstruction Finance Corporation, for a loan, to the Interstate Commerce Commission for approval thereof.

Q. (By Mr. Wood): Are those two related and should they go as one exhibit?

A. It is my understanding they should, because when the application was filed we were asked to make formal application in accordance with Circular 2 of the Reconstruction Finance Corporation, and this is the answer to Circular 2. [2262]

Mr. Swaine: Let me say that we are satisfied with Schedules F, L and P, plus the statement that those were part of the application dated so-and-so to the Reconstruction Finance Corporation, for a loan.

If the Reconstruction Finance Corporation does not want the whole application, we are content to omit everything except schedules F, L and P.

Mr. Wood: Mr. Examiner, we have here the application which Mr. Curry has just described, a different and separate document which is really a part of it, but which contains answers to various requirements of the Reconstruction Finance Corporation, and as to which Mr. Swaine has stated

(Testimony of M. J. Curry.)

that he wishes to offer only schedules F, L and P.

Mr. Swaine: Understand, that is only for the first mortgage bondholders committee. If the trustee has any different view, that is your responsibility.

Mr. Wood: That is agreeable to us. I will offer that as one exhibit, the application and those schedules in the *accompany* document.

Examiner Wilkinson: Is there any objection to just part of this document being introduced?

Mr. Coulson: Do I understand, Mr. Examiner, that this offering of parts of documents which all the parties have not had an opportunity to examine thoroughly is subject to [2263] the right of the other parties to ask to reintroduce parts?

Mr. Swaine: That is not so, now. The parties have had these documents for a long time.

Mr. Coulson: How long a time, Mr. Swaine?

Mr. Swaine: They have had ample opportunity to look at them.

Mr. Coulson: How long a time? I have had mine for 24 hours in my office.

Mr. Swaine: These documents have been in our office for a considerably longer time.

Mr. Coulson: You have a great advantage over the other contestants in this proceeding from the start.

Mr. Homire: These documents reached the Reconstruction Finance Corporation some time in the last two days.

(Testimony of M. J. Curry.)

Mr. Nicodemus: I think that an agreement to produce the balance would be satisfactory to everybody.

Mr. Swaine: These were sent to everybody on November 14th. I have the letter of transmittal. They were sent to you at the same time they were sent to me.

The Witness: They were delivered personally, if you will pardon me, to the New York parties on Monday. They were delivered on Monday.

Mr. Swaine: At Mr. Coulson's office.

The Witness: That is this Monday.

Mr. Coulson: I do not know whether this particular document—[2264]—some of them got in yesterday after I left the office—got to me Monday, Tuesday or Wednesday, but I know I have not been over it.

Examiner Wilkinson: As the Examiner ruled at the last hearing by reason of the fact that the copies of the exhibits could not be given to the parties in the proceeding, we received them but permitted the other sides to move to strike them out after they had had an opportunity to examine them.

If they have not received copies of these documents—

Mr. Swaine: They received them on Monday, Mr. Examiner.

Examiner Wilkinson: That is your statement, Mr. Swaine. Mr. Coulson said he received his yesterday afternoon.

(Testimony of M. J. Curry.)

Mr. Swaine: It is Mr. Curry's statement that they were delivered at Mr. Coulson's office on Monday.

Examiner Wilkinson: It is a rather embarrassing proposition here for the Examiner to try to pass upon when these documents were received, and he naturally is going to give counsel an opportunity to examine them. That is all he can do.

Mr. Swaine: Quite right.

Examiner Wilkinson: I understand there is no objection to the offer of this exhibit with the understanding that only portions of it are to be received as evidence?

Mr. Nicodemus: I object to it on the ground that it is [2265] irrelevant.

Examiner Wilkinson: You mean you object to the whole exhibit?

Mr. Nicodemus: I object to the whole thing, but I am reconciled to its going in if it is limited to one or two exhibits.

(Discussion off the record.)

Examiner Wilkinson: The whole document will be received as exhibit 82.

(Exhibit 82, Witness Curry, received in evidence.)

Mr. Swaine: That is why we brought down the whole exhibit. We were afraid we would then be met by the technical objection we had only half a document.

Mr. Coulson: Nobody has made a technical

(Testimony of M. J. Curry.)

objection. All we want to do is have an opportunity to complete this record.

Examiner Wilkinson: You have an opportunity to study this record, and then you can move to strike it out.

Mr. Nicodemus: I think the Examiner misunderstood my position. I objected to even the three exhibits that he culled out of the great mass of documents there as irrelevant. I am not objecting to the process of surgery. I think that ought to be applied very definitely. I do not like to see that huge application to the Reconstruction Finance Corporation go in. You see what it contains, maps, [2266] forecasts.

Mr. Swaine: Well, we have omitted all the maps and forecasts.

Examiner Wilkinson: The Examiner is certainly not going to read this exhibit over and pass on it now. He is receiving it subject to a motion to strike.

Mr. Coulson: I understood that all these exhibits along this line bearing on the equity and fairness of Mr. Swaine's plan were received subject to a motion to strike. Was not that agreed at the last hearing?

Examiner Wilkinson: That is correct, because you did not have copies of the exhibits at that time, and naturally you could not object or you could not approve it.

Mr. Coulson: Do I understand, Mr. Examiner, that in this ruling of yours the Commission is re-

(Testimony of M. J. Curry.)

ceiving these documents, subject to a motion to strike out, for the limited purpose of proving the fairness and the equity of the plan, and that you limit the word "plan" there to Mr. Swaine's plan, since neither the debtor's plan nor the A. C. James plan has asked for such proof as to fairness and equity?

Examiner Wilkinson: It does not mean Mr. Swaine's plan nor the institutional bondholders' plan alone. It means all the plans.

Mr. Swaine: Including any plan the Commission might hand down. [2267]

Examiner Wilkinson: Including any plan that is presented here.

Q. (By Mr. Wood) Mr. Curry, will you please produce the amended and supplemental application to the Reconstruction Finance Corporation for a loan, dated February 13, 1932, referred to on page 381 of the record?

A. Here it is (producing document). That is the amended supplemental application referred to.

Mr. Nicodemus: That seems to be relatively inoffensive. It is only a few pages.

Mr. Wood: I offer this in evidence.

Examiner Wilkinson: The document will be received as exhibit 83.

(Exhibit 83, Witness Curry, received in evidence.)

Mr. Wood: Now, the application to the Interstate Commerce Commission for the approval of the Reconstruction Finance Corporation loan dated

(Testimony of M. J. Curry.)

February 13, 1932, is also referred to on page 381 of the record, and I offer that in evidence.

Examiner Wilkinson: It will be received as exhibit 84.

(Exhibit 84, Witness Curry, received in evidence.)

Mr. Wood: And the application to the Interstate Commerce Commission dated February 11, 1932, for authority to issue \$15,000,000 of general and refunding mortgage bonds and \$5,000,000 principal amount of notes, referred to at page [2268] 381 of the record.

The Witness: This is the application referred to (producing document).

Mr. Wood: I offer that in evidence, with the exception of the printed copy of the mortgage, which is an exhibit to it.

Examiner Wilkinson: Is there any objection to deleting the copy of the mortgage?

Mr. Wood: The copy of the mortgage is already in evidence.

Examiner Wilkinson: It will be received as exhibit 85.

(Exhibit 85, Witness Curry, received in evidence.)

Mr. Nicodemus: Is it understood that we have a reservation of a general objection to all of this testimony as irrelevant? I do not want to be repeating it.

(Testimony of M. J. Curry.)

Examiner Wilkinson: I understand that Mr. Coulson made that objection at the beginning; and the Examiner ruled that he would have a general objection along that line. I do not know that you made the objection. The record will show it. But if you want to object to all of this testimony at the present time, you may state it on the record.

Mr. Nicodemus: I think it would be safer to make an objection each time that it is offered. I will try to do it briefly, then follow it up at the end with a motion to strike out most of the exhibits. I think about three or [2269] four of these exhibits are relevant. I think the drawdown under the first mortgage is relevant. I doubt the relevancy of the rest of it.

Q. (By Mr. Wood) Mr. Curry, will you produce the minutes of the executive committee meetings on February 11th, June 25th, July 23rd, October 15th, November 17th, and December 21st, 1931, and January 29, 1932? Those were referred to on page 384 of the record.

A. These are the minutes referred to (producing documents.)

Mr. Wood: I offer them in evidence.

Examiner Wilkinson: They will be received as exhibit 86.

(Exhibit 86, Witness Curry, received in evidence.)

Mr. Nicodemus: Record my objection to it, please, Mr. Reporter.

(Testimony of M. J. Curry.)

Q. (By Mr. Wood) Mr. Curry, will you produce the application to the Reconstruction Finance Corporation dated May 23, 1932, for a loan of \$759,000?

A. That is it. I have the application referred to here. (Producing document.)

Mr. Nicodemus: It has a number of exhibits that are already in.

Mr. Wood: It may be that by going over this we can eliminate some of it.

Examiner Wilkinson: We will take a recess here for 5 [2270] minutes.

(A short recess was taken.)

Mr. Wood: Mr. Curry, you have that application to the Reconstruction Finance Corporation dated May 23, 1932, for a loan of \$759,000, referred to on page 390 of the record.

I will offer in evidence the application itself, and schedules E, L and P, also exhibit C, which are annexed to that document.

Examiner Wilkinson: The exhibit will be received as exhibit 87.

Mr. Nicodemus: Under the general objection that it is irrelevant.

(Exhibit 87. Witness Curry, received in evidence.)

Q. (By Mr. Wood) Next, Mr. Curry, the application to the Reconstruction Finance Corporation, dated June 6, 1932.

A. "Amended and supplemental application" to

(Testimony of M. J. Curry.)

the Reconstruction Finance Corporation (producing document.)

Mr. Wood: I offer that in evidence.

Examiner Wilkinson: It is received as exhibit 88.

(Exhibit 88, Witness Curry, received in evidence.)

Mr. Wood: Then the application dated June 10, 1932, I offer that in evidence.

The Witness: This is an amendment and supplement to its application filed June 2, 1932 for loans aggregating \$759,000, and its amended supplemental application dated [2271] June 7th for further loans aggregating \$1,505,554.

Examiner Wilkinson: It will be received as exhibit 89.

(Exhibit 89, Witness Curry, received in evidence.)

Mr. Wood: Next is the application to the Commission dated August 1, 1932, for authority to issue \$5,000,000 of general and refunding mortgage bonds, referred to on page 390 of the record.

I offer that in evidence.

Examiner Wilkinson: Received as exhibit No. 90.

(Exhibit 90, Witness Curry, received in evidence.)

Mr. Wood: And the supplemental application to the Commission dated January 12, 1932, relating to the same issue of bonds. I offer that in evidence.

(Testimony of M. J. Curry.)

Examiner Wilkinson: The document will be received as exhibit 91.

(Exhibit 91, Witness Curry, received in evidence.)

Mr. Nicodemus: Subject to the general objection.

Mr. Wood: I now offer in evidence a certified copy of report and order of the Interstate Commerce Commission filed December 9, 1932, and report and order of the Commission filed February 25, 1932, in Finance Docket No. 9572, which relates to the issue of \$4,000,000 of general and refunding mortgage bonds.

Examiner Wilkinson: These statements will be received as exhibit 92. [2272]

Mr. Nicodemus: Subject to our general objection.

(Exhibit 92, Witness Curry, received in evidence.)

Mr. Nicodemus: What is the object of this, to prove \$4,000,000 of bonds were issued?

Mr. Wood: Yes. These were part of the picture showing the issue of the general and refunding bonds.

Mr. Nicodemus: The only object of this is the ultimate fact that \$4,000,000 of these bonds were issued?

Mr. Swaine: No; that is not so, Mr. Nicodemus.

Mr. Nicodemus: Excuse me. Counsel for the trustee said otherwise. Beg his pardon, not mine.

Mr. Swaine: To show that the general and re-

(Testimony of M. J. Curry.)

funding mortgage was not intended to be a purchase-money lien on any property at any time.

Mr. Nicodemus: I object on the further ground that the refunding mortgage speaks for itself, and it is already in evidence.

Q. (By Mr. Wood) Mr. Curry, will you please produce the notice, specification and bid relative to an issue of \$1,000,000 of first mortgage bonds which were authenticated and delivered on February 11, 1931?

A. I have here copies of notice, specifications, agreement and bid, covering purchase of \$1,000,000 principal amount first mortgage 5 per cent bonds referred to. (Producing document.) [2273]

Mr. Wood: I offer that in evidence.

Mr. Nicodemus: Objected to, subject to the general objection.

Examiner Wilkinson: It will be received as exhibit No. 93.

(Exhibit 93, Witness Curry, received in evidence.)

Q. (By Mr. Wood) Mr. Curry, do you have a similar notice, specifications and bids, relating to the subsequent issues, of first mortgage bonds, namely, the \$1,000,000 principal amount authenticated and delivered on June 25, 1931; \$900,000 authenticated and delivered on July 23, 1931; \$750,000 principal amount authenticated and delivered on November 25, 1931; \$350,000 principal amount authenticated and delivered on January 8, 1932; and \$1,000,000 principal amount authenticated and delivered on January 29, 1932?

(Testimony of M. J. Curry.)

A. We have similar papers in our records, yes.

Q. Are the documents relating to those subsequent issues of bonds substantially identical with the ones which have been introduced in evidence as exhibit 93?

A. To the best of my knowledge and belief, they are.

Mr. Wood: Mr. Examiner, for the purpose of shortening the record, I will not offer the subsequent notices, specifications and bids, but will let the record stand on Mr. Curry's statement that they are substantially identical. [2274]

Mr. Coulson: May I ask a question at this point?

Mr. Curry, do these subsequent applications contain the same statement which appears on the second paragraph of exhibit 93, to the effect that the first mortgage is a first lien on the main line aggregating 1050 miles?

Mr. Swain: Read the rest of it, please, if you are going to read part of it.

Mr. Coulson: Is the whole second paragraph included in the subsequent applications?

The Witness: In the specifications that you are reading from?

Mr. Coulson: Yes.

The Witness: The second paragraph?

Mr. Coulson: The second paragraph of the specifications, No. 2943, your exhibit 93.

The Witness: It is my recollection that on the

(Testimony of M. J. Curry.)

balance of the draw-downs the specifications were the same.

Mr. Coulson: They contain the same terms.

The Witness: Yes, sir. It is my recollection that they do.

Mr. Swaine: Mr. Examiner, it goes on to say that it will also be a first lien on the Northern California extension when completed.

Mr. Coulson: I beg your pardon, Mr. Examiner. It ought not to be misstated. The document speaks for itself, [2275] and it does not say the first mortgage will be a first lien. That is the point of it.

Examiner Wilkinson: As I understand it, exhibit 93 is in the record, and the subsequent documents referred to by Mr. Curry contain the same statements or similar statements as in 93. Is that correct?

The Witness: That is correct. That is the understanding, to the best of my knowledge.

Examiner Wilkinson: It will speak for itself, then.

Mr. Wood: The purpose of this, Mr. Examiner, is to show the notice, specifications and bids on the first block of the \$5,000,000 of first mortgage bonds which went into the Northern California extension, and to show by Mr. Curry's statement that in the case of the rest of the \$5,000,000, the same documents were used.

Mr. Nicodemus: Does the record now show the dates that the subsequent bonds were issued?

(Testimony of M. J. Curry.)

The Witness: Yes. He read them off.

Mr. Wood: I gave the dates of the authentication and delivery of each of the blocks of the first mortgage bonds.

Mr. Nicodemus: That is all right, then. That is quite satisfactory.

Mr. Wood: That is all with Mr. Curry, unless someone wishes to cross examine.

Examiner Wilkinson: Are there any questions of Mr. Curry? [2276]

Do the parties wish to reserve the right to recall Mr. Curry?

You are excused, Mr. Curry.

Mr. Coulson: Just a moment. Mr. Examiner, is not the right to recall inherent in the right you have given us to put in additional parts of these documents if we should need to?

Examiner Wilkinson: The Examiner just wanted to be safe here and have that on the record.

Mr. Nicodemus: It includes that reservation.

Mr. Coulson: I see. Thank you.

Mr. McCollom: Yes. We, of course, would like to have that. I did not know whether you were excusing him without reservation or not.

(Witness excused.)

Mr. Wood: I will call Mr. Buckley.

CARL E. BUCKLEY

testified further as follows:

Direct examination

Mr. Wood: Mr. Examiner, at the last hearing we introduced as exhibit 74 a telegram from Crocker First National Bank of San Francisco to the Chase National Bank relative to the recording of the first mortgage.

I substituted a typewritten copy of the original. I wish to withdraw the typewritten copy and substitute a [2277] photostatic copy, because I think the photostatic copy is more accurate, and we have three photostatic copies here to give the Commission.

Examiner Wilkinson: Mr. Woods, we cannot withdraw it very well. Just introduce that with your statement. It is a copy of it, and we will leave the other one in as well.

Mr. Wood: The original telegram, of course, was offered in evidence.

Examiner Wilkinson: We will leave the record state that this supersedes the other.

Mr. Wood: This supersedes the typewritten copy.

Examiner Wilkinson: It will be received as exhibit No. 94. Exhibit 94 will supersede exhibit 74. (Exhibit 94, Witness Buckley, received in evidence.)

Q. (By Mr. Wood) Mr. Buckley, will you produce the file relating to the authentication and de-

(Testimony of Carl E. Buckley.)

Livery of \$1,000,000 of debentures on February 27, 1931? That is referred to on page 427 of the record.

A. I have it here (producing document).

Mr. Wood: I offer that in evidence.

Examiner Wilkinson: It will be received as exhibit No. 95.

(Exhibit 95, Witness Buckley, received in evidence.)

Mr. Wood: I wish to substitute photostatic copy for the [2278] original.

Examiner Wilkinson: Mr. Wood, the original is not in the record and the original has not been offered. As I understand, there was no objection by the parties here to introducing copies rather than the originals; so if you just offer the copies, it will be sufficient.

Mr. Wood: I see. I misunderstood the procedure. I thought we had to offer the original and then withdraw it and substitute the copies.

Examiner Wilkinson: As long as there is no objection by the other parties to copies other than the originals, there is no objection on the part of the Commission.

Mr. Nicodemus: That is the way the record reads.

Mr. Wood: They were merely produced at the last hearing. The originals are here.

Mr. Nicodemus: We object to all of these exhibits relating to debentures, which the record shows were paid off prior to the creation of the refunding mortgage.

(Testimony of Carl E. Buckley.)

Examiner Wilkinson: The objection is overruled.
~~It will be received as exhibit 95.~~

(Exhibit 95, Witness Buckley, received in evidence.)

Mr. Wood: For the purpose of shortening the record again on these subsequent papers relating to a take-down of debentures, I am merely going to ask Mr. Buckley whether the papers are substantially identical with the ones contained in [2279] the exhibit just offered, with the exception, I think, of the last two, in which there were some additional documents.

Q. Mr. Buckley, there were subsequent applications for authentication and delivery of debentures as follows:

\$600,000 principal amount authenticated and delivered on March 26, 1931?

A. That is correct.

Mr. Wood: I think perhaps you had better give the amount of the expenditures in the certificate of that application, and the dates on which the expenditures were made.

In each of these cases, Mr. Examiner, the application papers followed forms described in the debenture agreement, and they merely certified that expenditures of certain amounts were made between certain dates on the Northern California extension.

I am going to have Mr. Buckley read into the record the amounts of the expenditures and the dates of the expenditures in each case, so as to complete the factual material.

(Testimony of Carl E. Buckley.)

Examiner Wilkinson: Is there any objection to Mr. Buckley's reading these extracts rather than putting the document in?

Mr. Coulson: I understand he is going to read the dates, [2280] the amounts, and the application of the funds?

Mr. Wood: Mr. Coulson, the papers do not state the application of the funds any more than in the language of the indenture, which says that liabilities shall have been incurred or expenditures made for the construction of a line which is described in the language of the indenture.

Mr. Coulson: Am I wrong, Mr. Wood, in understanding that as a part of exhibit No. 95 there is a document which is the certificate of the president and treasurer of the Western Pacific Railroad Company, paragraph 1 of which begins,

"That liabilities to the amount of \$317,701.82 have been, and/or within sixty (60) days next succeeding February 1, 1931, the date of this certificate, will be, incurred by the Western Pacific Railroad Company for the purpose of constructing, purchasing and/or otherwise acquiring the company's 'Northern California Extension' referred to and more particularly described,"

and so on?

Mr. Wood: That is what I refer to, yes.

Mr. Coulson: Do all the others contain that same phrase, the same application of funds? [2281]

(Testimony of Carl E. Buckley.)

Mr. Wood: Yes. That is taken from the indenture, and there is no specification of particular purposes in the way of work on the line or acquisition of particular items of property. I merely want to give the amounts of the liabilities and the expenditures and the dates involved, the amount of the debentures and the dates of authentication.

Mr. Coulson: With the statement in the record that the expenditures were all for the Northern California Extension?

Mr. Wood: Yes. In other words, these papers, with the exception of those which I mentioned, are substantially identical with the one which has just been introduced and contains the description of the line.

Mr. Nicodemus: Mr. Examiner, in view of this statement as to the contents of this document—I was not aware of that fact—I would like to withdraw my objection to exhibit 95. I think that is relevant.

Examiner Wilkinson: All right. Proceed, Mr. Buckley.

The Witness: \$600,000 principal amount of debentures, authenticated and delivered March 26, 1931.

Certificate of the president and treasurer dated March 16, 1931, states that liabilities to the amount of \$1,049,280.86 have been and/or within 60 days next succeeding March 16, 1931, the date of this certificate, will [2282] be incurred by the Western Pa-

(Testimony of Carl E. Buckley.)

acific Railroad Company, and expenditures to the amount of \$150,719.14 have been actually made by the Western Pacific Railroad Company prior to March 16, 1931, for the same purpose.

Q. (By Mr. Wood) The application for \$530,000 of debentures which were authenticated and delivered May 25, 1931: Will you please look at the certificate and give the dates and amounts of the liabilities and expenditures referred to?

A. Liabilities to the amount of \$588,642.60 have been or within 60 days next succeeding May 15, 1931; expenditures to the amount of \$471,357.40 have been actually made by the Western Pacific Railroad Company prior to March 16, 1931.

Mr. Wood: Mr. Examiner, in that file there is a correction to be made. The certificate has a variance of dates. This is the file that relates to the \$530,000 of debentures authenticated and delivered May 25, 1931. The certificate states that the liabilities have been made within 60 days next succeeding May 15, 1931, and that the expenditures were made prior to March 16, 1931. Those two dates should coincide.

If there is no objection, I should like to state the contents of a letter which occurs in that file, dated June 8, 1931, addressed to the Chase National Bank as [2283] trustee under the indenture, by M. J. Curry, vice president of the railroad company, in which he states that "We have just been advised by our legal department at San Francisco that a typo-

(Testimony of Carl E. Buckley.)

graphical error has been noted," and states that the date given as March 16, 1931 should read May 15, 1931.

In other words, that corrects the discrepancy in the certificate.

Q. Application for \$995,000 of debentures, authenticated and delivered June 20, 1931. Will you also give the amount and dates of the liabilities and the amount and dates of the expenditures?

A. Liabilities to the amount of \$1,968,732.23 have been or within 60 days next succeeding June 17, 1931, the date of the certificate, will be incurred; and expenditures to the amount of \$21,267.77 have actually been made by the Western Pacific Railroad Company prior to June 17, 1931.

Q. The next is application for \$309,000 of debentures, authenticated and delivered on August 25, 1931.

A. Liabilities to the amount of \$618,000 have been or within 60 days next succeeding August 15, 1931, the date of this certificate, will be incurred by the Western Pacific Railroad Company.

Q. There are no expenditures described in that certificate, only liabilities? and no expenditures?

[2284]

A. Only liabilities; no expenditures.

Q. Next is the application for \$600,000 of debentures, authenticated and delivered October 20, 1931.

A. Liabilities to the amount of \$821,391.28 have been and/or within 60 days next succeeding October 5, 1931, the date of this certificate, will be incurred

(Testimony of Carl E. Buckley.)

by the Western Pacific Railroad Company; and expenditures to the amount of \$378,608.72 have been actually made by the Western Pacific Railroad Company prior to October 5, 1931.

Q. The next is the application for \$120,000 principal amount of debentures, authenticated and delivered November 25, 1931.

A. Liabilities to the amount of \$12,854.54 have been and/or within 60 days next succeeding November 11, 1931, the date of this certificate, will be incurred by the Western Pacific Railroad Company; and expenditures to the amount of \$227,145.46 have been actually made by the Western Pacific Railroad Company prior to October 5, 1931.

Mr. Wood: There is another date wrong there. In that file, Mr. Examiner, the date October 5, 1931, which is given in connection with the expenditures, should read November 11, 1931. There appears in this file a letter dated November 24, 1931, addressed to Mr. Buckley by Mr. Curry, in which he says,

[2285]

"Referring to your conversation with Mr. Bruen yesterday relative to typographical error appearing in next to the last line of paragraph 1 of certificate of President Adams and Treasurer Bates, debenture order No. 7, I am enclosing herewith a copy of a telegram dated November 23, in response to mine of same date, from which you will note that Treasurer Bates of this company has authorized me to instruct you as Trustee to change the words 'October 5, 1931' to 'November 11, 1931'."

(Testimony of Carl E. Buckley.)

The telegram referred to is in the file also.

Q. Next is the application for the authentication and delivery of \$350,000 of debentures, authenticated and delivered January 29, 1932.

A. Expenditures to the amount of \$700,00 have been actually made by the Western Pacific Railroad Company prior to January 31, 1932, the date of this certificate.

Q. There are no liabilities referred to in the certificate as having been incurred?

A. No liabilities referred to.

Mr. Wood: With respect to the applications for authentication and delivery of \$347,000 of debentures on March 28, 1932 and \$149,000 of debentures on May 31, 1932, I should like to offer the file, because they contain some additional matter relating to the cancellation of the debentures and the transactions which took place in connection with the issue of General and Refunding Mortgage Bonds and notes.

Will you produce the application for \$347,000 of debentures, authenticated March 28, 1932?

(The witness did so.)

Examiner Wilkinson: Received as Exhibit No. 96.

(Exhibit No. 96, Witness Buckley, received in evidence.)

Mr. Coulson: May I ask a question for the sake of continuity in the record at this point?

Examiner Wilkinson: Yes.

(Testimony of Carl E. Buckley.)

Mr. Coulson: Mr. Buckley, was this application which has just been marked Exhibit 96 received after the General and Refunding Mortgage of the Western Pacific Railroad Company had been filed and recorded and had become a lien upon the property of the Western Pacific Railroad Company?

Mr. Swaine: I object to the form of that question because unless the bonds had been executed and delivered under the mortgage it could not be technically a lien.

Mr. Coulson: May I ask Mr. Buckley whether any bonds had been issued under the General and Refunding Mortgage of January 1, 1932 at the time of this application which has just been admitted into the record as Exhibit No. 96?

The Witness: As to whether or not there were any bonds [2287] authenticated and delivered?

Mr. Coulson: Authenticated and delivered.

The witness: That is a matter of record which I could ascertain only by refreshing my recollection.

Mr. Coulson: Do you know that the mortgage had been recorded at that time?

The Witness: I do not know that. I would have to ascertain.

Mr. Coulson: Am I right that the record shows both those facts, Mr. Nicodemus?

Mr. Nicodemus: I cannot answer that.

Mr. Wood: I think, however, Mr. Coulson, that this much appeared at the last hearing in a state-

(Testimony of Carl E. Buckley.)

ment of counsel, that at the time of the execution and delivery of the general and refunding mortgage, which I think was March 1, 1932, the bonds were simultaneously authenticated and delivered. I do not believe that anything appears as to the recording of the mortgage or the dates of the recording.

Mr. Coulson: The point, Mr. Examiner, is that we have of record the application of these funds to the construction of the northern extension. I think we have the dates of application, part of them, prior to the recording of the general and refunding mortgage, which in terms gave to the Trustee of the General and Refunding [2288] Mortgage a lien on the northern California extension.

I think this recording which is being put in here should show the extent to which any take downs of these debentures which were immediately converted into notes secured by General and Refunding Mortgage Bonds were after the date of the recordation of the general and refunding mortgage. That is the only point in which I am interested, in this connection. I think perhaps the record is clear at this point, but we will have a chance to clear it up later, if it is not.

Mr. Nicodemus: So far as the debtor is concerned, it has introduced no evidence as to the date of recording of either the First Mortgage or the General and Refunding Mortgage. I am not sure that the date of the recording of the Refunding

(Testimony of Carl E. Buckley.)

Mortgage is material, in connection with this controversy. It may be a good lien as between the parties regardless of the recording. The recording might be material if there were a third party claiming as a bona fide purchaser.

Mr. Wood: There is evidence on behalf of the First Mortgage Trustees as to the recording of a first mortgage in the two counties in which the northern extension is situated.

Mr. Nicodemus: There is a telegram here that said it was recorded. [2289]

Mr. Coulson: I think that is important. I think the record should also say what property has been added to the property of the Western Pacific since the recordation of the First Mortgage, and the basis on which the bonds have been taken down since that date.

Mr. Nicodemus: I think the Debtor would like to request the Trustee of the Refunding Mortgage to produce the date of the recording of that Mortgage, as shown by the originals on file.

Mr. McCollom: We have something else which we think will do for that purpose; when I come to put all my proof in—there is not much of it—I intend to put that in among the other proof.

Mr. Nicodemus: That is quite satisfactory.

Mr. Wood: Will you produce the application for \$149,000 principal amount of debentures, authenticated and delivered May 31, 1932?

(Testimony of Carl E. Buckley.)

(The witness did so.)

Mr. Wood: I offer that in evidence.

Examiner Wilkinson: It will be received as Exhibit No. 97.

(Exhibit No. 97, Witness Buckley, received in evidence.)

Mr. Wood: Next, will you produce the files relating to the cancellation of \$4,504,000 principal amount of [2290] debentures on March 1, 1932? That is referred to in the record at pages 429 and 430. I offer that in evidence.

Examiner Wilkinson: It will be received as Exhibit 98.

Q. (Exhibit No. 98, Witness Buckley, received in evidence.)

Q. (By Mr. Wood) Mr. Buckley, with respect to these files relating to the authentication and delivery of debentures, that were not actually put in evidence, but from which you read various dates and amounts, with the exceptions which were noted as corrections of certain errors, and in some cases where the certificates certified liabilities only or expenditures only in place of certifying both liabilities and expenditures, they are substantially identical with the file which was introduced in evidence as Exhibit 95? That was the application for \$5,000,000 of debentures, which were authenticated on February 27, 1931?

A. I think they are, yes.

Q. Substantially identical.

(Testimony of Carl E. Buckley.)

A. Substantially identical.

Mr. Wood: That is all.

Examiner Wilkinson: Are there any questions of Mr. Buckley?

Mr. Nicodemus: I would like to straighten out this question of the exhibits that were offered in connection [2291] with the authentication of the first mortgage bonds. I understood that Mr. Swaine earlier in the session agreed that everything should be eliminated except the certificate of expenditures and the subsequent draw-downs.

Mr. Swaine: So far as we are concerned, if there is the same character of testimony as was just made regarding the debenture take-downs, namely, that all the documents are like the typical one—

Mr. Nicodemus: That is what I want to do.

Mr. Swaine: —with the exception of the certificate of expenditures, then we are quite content to have only the certificate of expenditures.

Mr. Nicodemus: By this motion I want to make we can eliminate 14 exhibits.

Mr. Swaine: No, you do not eliminate fourteen exhibits, you cut down fourteen exhibits, in lieu of the whole exhibit.

Mr. Nicodemus: Each exhibit consisted of about nine documents.

Mr. Swaine: In lieu of the whole document you have a stipulation plus the part of each document which varies from the other documents.

(Testimony of Carl E. Buckley.)

Mr. Nicodemus: I move to strike out Exhibits 63 to 73, inclusive, excepting in each case the certificate of expenditures. Mr. Buckley testified that with the exception of the certificate of expenditures and the date of the certification of the bonds they are substantially identical.

Examiner Wilkinson: Is there any objection to that?

Mr. Coulson: We want to leave of record the dates of certification, because they have some importance, but aside from that, I think to eliminate these 112 documents which are part of these exhibits is very useful.

Examiner Wilkinson: As I understand it, these exhibits have already been received physically in the record?

Mr. Nicodemus: They were. That is correct.

Mr. Coulson: It means eliminating all the documents in them except one, and the date; show the date and one document.

Examiner Wilkinson: And there is agreement of all parties that this may be done?

Mr. Swaine: He is not striking the exhibit, he is simply cutting the exhibit down in the same manner.

Examiner Wilkinson: You had better have it on your record here so that there will be no question about it, because we cannot take them out of the record physically. They will stay in there, but if you want the record to show that only certain parts of them—

(Testimony of Carl E. Buckley.)

Mr. Nicodemus: They will not stay in there physically in the sense that you will be required to certify them to [2293] the Court or to the full Commission in the case of a hearing. That is what I am protecting.

(Discussion off the record.)

Mr. Wood: It occurs to me, since these documents are already in, that they might be left as they are, and when it comes to taking the record up to the Court the parties can stipulate to omit from the printing of the record the facts that are not essential. Would not that serve the purpose that Mr. Nicodemus has in mind?

Mr. Swaine: Why is not that a happy suggestion? That is the usual practice in the trial of cases before courts, that a document goes in with the idea that the parties will try to shorten the record on appeal.

Examiner Wilkinson: The only thing is that the Examiner understands we have to certify to the Court the transcript of the proceedings before this Commission. If these exhibits have been before the Commission and have been considered by the Commission, I think we would have to certify them up. So if you want to do anything like that, you had better make an agreement here on the record now that they are not to be considered by the Commission.

Mr. Coulson: It is my impression that under Section 77 the Commission has to send up anything

(Testimony of Carl E. Buckley.)

before it. It is unlike litigation, where the parties can agree to eliminate certain things that were considered by the [2294] inferior tribunal.

Examiner Wilkinson: That is right, so you will have to make the agreement here on the record at the present time.

Mr. Nicodemus: The debtor will be very pleased to make such an agreement now.

Mr. Swaine: And so are we willing to agree that there shall be excluded from the record everything in each of those thirteen draw-downs except the date and the certificate showing the expenditures, it being stipulated by all of the parties that all of the other parts of the certificate are substantially identical with the first of the series.

Mr. Nicodemus: That is right.

Mr. Wood: Of course, you have two kinds of papers.

Mr. Nicodemus: I protected you on that. I gave you two exhibits, 61 and 62.

Mr. Wood: Yes, I just want to get the thing straight on the record.

First of all, you have an application for taking down bonds against the deposit of cash. There are no certificates in connection with those applications. I think the record already shows the dates and amounts of the authentication and delivery. Then you have the cash requisitions on which the deposited cash, the proceeds of the [2295] sale of the

(Testimony of Carl E. Buckley.)

bonds, was taken down against the certification of the expenditures. In those appear the certificates of the officers as to the dates and amounts of the expenditures and the purposes for which they were made. As I understand it, we leave in the first two typical papers, which will be the application—

Mr. Nicodemus: They will be 61 and 62.

Mr. Wood: Exhibit 61, which is an application for a million dollars of bonds, and Exhibit 62, which is the first cash requisition. Then we leave in the record the dates and the amounts on which the bonds were taken down, and the dates and amounts of the cash requisitions and all of the certificates of expenditures on which those requisitions were based. Is that correct?

Mr. Swaine: That is right.

Mr. Nicodemus: That is quite right.

Examiner Wilkinson: As to the rest of the exhibit, the motion is here that it shall not be considered by the Commission?

Mr. Swaine: Instead of doing it that way, why do we not just stipulate it shall not be considered? I do not think that this is open to a motion to strike. I think if we insist on it it is relevant evidence.

Examiner Wilkinson: It is purely a stipulation here.

Mr. Swaine: Instead of a motion to strike, I suggest [2296] that the trustee and we withdraw that part.

(Testimony of Carl E. Buckley.)

Mr. Nicodemus: The excluded parts are withdrawn?

Mr. Wood: Yes. Certain correspondence between the Crocker First Federal and the Chase will vary in the documents. I do not think that they are material, except that they simply show the transaction.

(Discussion off the record.)

Mr. Wood: I make a formal request that the Commission consider with respect to Exhibits 63 to 73, both inclusive, only the portions to which I have just referred. Would the Examiner prefer that in order to get the thing concisely in the record we give again the dates and amounts of the bonds and the cash taken down, or leave that to the record as it now stands? I think it is all in there in the course of the testimony at the last hearing.

Examiner Wilkinson: It was all put in there.

Mr. Wood: The question is whether you would like to have it given concisely as Mr. Buckley gave it with the debentures.

Examiner Wilkinson: I do not think it is necessary, unless the other parties want it.

Mr. Wood: I am satisfied on the record as it stands.

Examiner Wilkinson: The request that has been made is agreed to by all parties? There are no objections?

(No response.) [2297]

The request is granted; then:

(Testimony of Carl E. Buckley.)

Examiner Wood: I have no further questions.
Mr. Examiner.

Examiner Wilkinson: Are there any questions of
Mr. Buckley? You may be excused, Mr. Buckley.

(Witness excused.)

Mr. McCollom: I would call the Examiner's at-
tention with reference to the general and refunding
mortgage to the fact that the mortgage was in-
troduced as Exhibit 6 at page 25 of the minutes.
I have never heard of a dispute as to the validity
of the mortgage. While I have here various documents
such as authorizations of stockholders, auth-
orization of Directors, and so forth, as at present
advised I see no necessity of offering any of those
papers.

At page 25 of the minutes there is testimony by
Witness Elsey that there have been authenticated
under the mortgage bonds amounting to \$18,99,500,
and that they are pledged as collateral under the
notes of the A. C. James Company, Reconstruction
Finance Corporation, and the Railroad Credit Cor-
poration.

That testimony was not objected to or questioned,
therefore I feel no necessity of duplicating the sub-
stance of that testimony here by further testimony,
as at present advised. [2298]

Also, at page 26, there was introduced Exhibit
9, which is stated to be a complete and detailed state-
ment of the short term obligations of the carrier.

with three issues of notes, to which the witness has referred, and the schedules of collateral therefore.

I assume that that exhibit, although I have not studied it, states what it purports to state, and is adequate for the purpose for which it was introduced.

Also, Exhibit 10 supplements Exhibit 9, to a certain extent, so I merely refer to those exhibits 9 and 10 in passing.

I will call Mr. Buckley,

CARL E. BUCKLEY

testified further as follows:

Direct Examination

Q. (By Mr. McCollom) Mr. Buckley, have you produced from the files of the trustee under the General and Refunding Mortgage, which I will for shortness term the General Mortgage, a letter to the Chase from H. P. Tyler, attorney for the Western Pacific Railroad Company, dated August 17, 1932, showing the dates and places of recording of the General Mortgage?

A. I produced that letter, yes.

Q. Have you produced also photostatic copies of that letter? [2299] A. Yes, sir.

Mr. McCollom: I offer in evidence a photostatic copy of that letter.

Examiner Wilkinson: Have the other parties had copies of this document?

(Testimony of Carl E. Buckley.)

Mr. McCollom: I believe they have not been distributed up until the present moment.

Mr. Swaine: We are quite willing to examine these as they come up and not make any objection on the ground we have not seen them for two days. We have no objection.

Examiner Wilkinson: It will be received as No. 99.

(Exhibit No. 99, Witness Buckley, received in evidence:)

Mr. McCollom: Have you produced from the records of the Chase their transcript of certification and delivery of the General and Refunding Mortgage bonds, together with a photostatic copy?

The Witness: I have not produced the original of that. I did not know that that was necessary.

Q. Have you produced a correct photostatic copy of that transcript? A. Yes.

Mr. Swaine: We have no objection to this, except that I suggest that Mr. Buckley testify as to the meaning of the word "date". Some of those things are rather cryptic. [2300]

Q. (By Mr. McCollom) This transcript which you have produced is in two sheets, is it not, the first relating to bonds designated as General and Refunding Mortgage Gold Bonds, Series A, 5 per cent, due January 1, 1957, and the second relating to the General and Refunding Mortgage Gold Bonds, Series B, 5 per cent, due January 1, 1957?

A. That is correct.

(Testimony of Carl E. Buckley.)

Q. The top sheet shows, does it not, in the first column the date of delivery out by the Chase of the bonds that are referred to on the transcript?

A. The date on the left-hand column is the date on which the transaction occurred which appears opposite that date.

The first block of the form shows the date on which bonds were received from the company.

The next block shows the dates and details relative to the authentication and delivery of bonds.

The next block is a cancellation of bonds, and the next block, the total bonds outstanding.

The last block on the sheet would be the bonds held unissued, if any.

The date on the left would correspond to any of those transactions that appear opposite it.

Q. The column under the heading "outstanding" shows a final balance outstanding, according to the records of [2301] the Chase, in the principal amount of \$14,999,500, is that correct?

A. That is correct; under Series A.

Q. Referring to the sheet which relates to the Series B Bonds, that has only one item on it, has it not? A. That is correct.

Q. That relates to \$4,000,000 in principal amount of the bonds and shows the date of delivery out and the authority under which delivered, and the balance of Series B bonds outstanding, in the amount of \$4,000,000. A. That is correct.

(Testimony of Carl E. Buckley.)

Mr. McCollom: I offer the transcript in evidence.

Mr. Swaine: I have no objection, but I would like to ask just one question on the form.

In the first line, in the first column appears 1932, March 2 as of 1.

In the fourth column appears the figure \$14,380,000. In the seventh column appears the figure \$5,630,000, and under that also a figure \$8,750,000, with nothing carrying over to the first column. Am I to understand as to that figure that it is still under March 2 as of March 1?

A. The figures in the seventh column of \$5,630,000 principal amount of series A bonds, and \$8,750,000 principal amount of series A bonds are indicated on this record as having been authenticated and delivered on March 1, 1932 [2302]

Mr. Swaine: No. Are you right about that? Is it not March 2nd? The Witness: No.

Mr. Swaine: It says March 2 as of 1. When did you actually do it?

The Witness: March 1, but for some reason—I do not know the reason—the authorizing ticket reflecting the transaction on this record was not posted as of the date of the transaction, and it is just our practice not to put it in as of March 1, the date, but post it as of a subsequent date as of a prior date—to post it as of a subsequent date as of the date on which the transaction took place.

Mr. Swaine: The physical act, then, was on March 1st? The Witness: Correct.

(Testimony of Carl E. Buckley:)

Mr. Swaine: In the seventh column nothing appears opposite the figure \$5,030,000, to which you have just made reference, but opposite the figure \$8,750,000 appear the words, "Pursuant to Article 2, Section 4—delivered to company."

The Witness: That is correct.

Mr. Swaine: What is the reason for there being no explanation as to the \$5,630,000?

The Witness: This "Remarks" column to which you have just referred is a memorandum column, and refers to [2303] those bonds which were delivered on that day in the aggregate. In other words, it refers not only to the \$8,750,000 principal amount which on this sheet is opposite those "Remarks," but also refers to the \$5,630,000.

Mr. Swaine: That is just what I was trying to get at. In other words, the fact that it is only against the \$8,000,000 was not intended to exclude its applicability to the \$5,630,000?

The Witness: That is correct.

Mr. Swaine: That is all I want. I have no objection to it.

(Discussion off the record.)

Examiner Wilkinson: These transcripts, consisting of two sheets, will be received as Exhibit 100, and you will furnish copies.

(**Exhibit No. 100, Witness Buckley**)

Q. (By Mr. McCollom) The series A and series B, as shown by the last exhibit as outstanding.

(Testimony of Carl E. Buckley.)

according to the records of the Chase, aggregate how much?

A. \$18,999,500 principal amount of bonds.

Q. Your records indicate also that all of those bonds were delivered to the company, do they not? A. They do.

Mr. McCollom: May I ask the railroad company to supply for the next hearing, unless it is already in the [2304] record; a statement of the dates of delivery by the railroad company of those bonds?

Mr. Nicodemus: We will do that. Their delivery to the trustee for authentication, or their delivery to pledgees?

Mr. McCollom: The delivery of the authenticated bonds out from the railroad company.

Mr. Nicodemus: To the pledgees?

Mr. McCollom: Yes.

Mr. Nicodemus: Is it not in Exhibit 9?

Mr. Swaine: I do not think the date of the actual delivery is shown, just the date of the note for which the obligations were pledged.

Mr. McCollom: I think it is a very simple matter to state the date of the initial delivery out by the railroad company of the authenticated bonds. You do not know now, I suppose?

Mr. Swaine: We will be glad to stipulate that that can be filed by Mr. Nicodemus, and we will accept it as part of the record as of today, without any opportunity to examine it.

Mr. Nicodemus: All right, that is fine.

(Testimony of Carl E. Buckley.)

Q. (By Mr. McCollom) Have you produced a photostatic copy of the records of the case with reference to the monies held by the Chase as Trustee under the General [2305] Mortgage as proceeds of collateral? A. I have.

Mr. Swaine: We have no objection.

Mr. McCollom: I offer in evidence this transcript.

Examiner Wilkinson: It will be received as Exhibit 101.

(Exhibit No. 101, Witness Buckley, received in evidence.)

Q. (By Mr. McCollom) Have you produced a photostatic copy of the records of the Chase as Trustee under the general mortgage showing the income received on collateral held by it as Trustee under that mortgage? A. I have.

Mr. Swaine: No objection.

Examiner Wilkinson: It will be received as Exhibit No. 102.

(Exhibit No. 102, Witness Buckley, received in evidence.)

Q. (By Mr. McCollom) Have you produced a correct list of securities held by the Chase as Trustee under the General Mortgage as of the close of business October 21, 1936? A. Yes.

(Discussion off the record.)

Mr. McCollom: I offer in evidence the list produced by the witness. [2306]

Examiner Wilkinson: Any objection?

(Testimony of Carl E. Buckley.)

Mr. Coulson: None.

Mr. Wood: No objection.

Examiner Wilkinson: It is received as Exhibit No. 103.

(Exhibit No. 103, Witness Buckley, received in evidence.)

Q. (By Mr. McCollom) Mr. Buckley, you have seen from time to time, have you not, statements of collateral as physically held by the Trustees under the first mortgage of the Western Pacific?

A. I recall one certificate in there from the Trustee.

Q. You know, for example, that that list shows certain securities of the Sacramento Northern Railroad Company?

A. I will have to verify my recollection as to specific details.

Q. I am not asking, Mr. Buckley, as to any specific amount. I am simply asking whether you have seen lists showing the Trustee of the first mortgage to hold certain securities?

A. I recall a list that is in our file.

Q. Of the Sacramento Northern Railroad. Has the Chase ever made any investigation as to the right of the Trustees under the First Mortgage to hold the collateral or securities which that Trustee holds? A. I do not know. [2307]

Mr. Nicodemus: I do not know whether his answer is responsive: Do you know there was no such investigation?

(Testimony of Carl E. Buckley.)

The Witness: I have no knowledge on it now, because I have not looked into the question. If there was any, it is a matter of record. It is the first time I have heard about it, and I have not examined our records to ascertain whether there was or not.

Q. (By Mr. McCollom) You do not know whether the Chase has had any occasion to study that question?

A. No, I do not, Mr. McCollom.

Q. Would the same answer be true as to any other collateral held by the Trustee under the First Mortgage?

A. Except this—the only knowledge I have as to the collateral—that a short time ago I believe Mr. Homire requested Milbank, Tweed, Hope & Webb, our counsel, to furnish him with a memorandum list of collateral handled by us as trustee under the first and refunding mortgage bond indenture.

I had a man make up such a list, and furnished it, I believe, to Mr. Wood of our counsel, and I assume he sent it along in response to your request.

Mr. Wood: It was sent to Mr. Homire.

The Witness: A copy of that list that was furnished to Mr. Homire is in our files. A copy of that list is produced here today by you. That is the copy (indicating). [2308] That is a copy which purports to show the correct amount of collateral held by us as Trustee under the Refunding and General.

(Testimony of Carl E. Buckley.)

But the primary record is still in our office, and while I believe that that is a correct list, and while I believe that there is a certificate from the Crocker First Federal as Trustee under the First Mortgage in our files, has indicated on that list—and I believe that there is a security of the Sacramento Northern as shown on that list—I cannot swear to the correctness of that without getting the primary record, you see.

Q. I do not think you understand my question, Mr. Buckley. My question was whether the Chase so far as you knew had ever made any investigation as to the right of the Trustees under the first mortgage to hold any collateral which they held as trustees under that mortgage.

A. As to that question I do not know, I have no knowledge.

Q. So far as you know, has the Chase as Trustee under the General Mortgage made any investigation as to the property which the railroad company acquired after the date of the first mortgage, and as to whether or not such property is covered by the lien of the first mortgage?

A. I have no knowledge of that, either, sir.

Q. Do you think you would have a present knowledge of it if it had been done? [2309]

A. It is quite likely that I would not. In a matter that has been extending over these years, having it flashed on me out of a clear sky, I might not. If I recollect it, it would just be chance.

(Testimony of Carl E. Buckley.)

Mr. McCollom: That is all we have to offer now,
Mr. Examiner.

Examiner Wilkinson: Do you care for Mr.
Buckley again?

Mr. McCollom: Mr. Buckley is in New York and
I assume that we could always recall him.

Examiner Wilkinson: Any questions of Mr.
Buckley?

You are excused, Mr. Buckley.

(Witness excused.)

Examiner Wilkinson: Is there anything fur-
ther?

Mr. Nicodemus: None on the part of the Debtor.

Mr. Swaine: I understand the Debtor has closed
its case. We have closed our case. I suggest that the
Examiner fix a date for filing briefs.

Mr. McCollom: That of course would not be
entirely satisfactory to us. I think Your Honor
must appreciate that the Irving was not substi-
tuted as Trustee under this mortgage until last
Friday. Since that time I have read several hundred
pounds of papers, and there are still several hun-
dred pounds of papers that have to be read. While
it is quite true that all of those papers will not
[2310] necessarily have any bearing on any ques-
tion that remains open, still, the moment that you
suggest the question of priority as between mort-
gages, you raise a very serious question. We should

not wish to have the record closed so far as we are concerned until after we had what under all the circumstances will be considered reasonable opportunity to study the facts, with the purpose of finding whether there is further evidence to be introduced in support of the claim of the general mortgage as against the First Mortgage.

I have consulted with the holders of the bonds issued under the general and refunding mortgage, and they feel that there should be a month's adjournment.

Mr. Swaine: Mr. Examiner, the General and Refunding Bonds are not as in the ordinary case held by large numbers of scattered bondholders who must be represented by a trustee or not be represented at all. All of the bonds are held by three institutions, the Reconstruction Finance Corporation; the Railroad Credit Corporation, and the A. C. James Company.

The negotiation of this plan was under consideration for many, many months before a plan was filed at all. All three of those bondholders had ample opportunity to examine as to their rights, because the question of what their rights were was naturally an important item in the [2311] negotiation of the plan.

I have forgotten the exact date on which the plan was filed. The first hearing, as I remember it, in this proceeding, was some time in March. Counsel for all three holders of the General and Refunding Bonds appeared at the first hearing. They

have been here at all the hearings down to date. They have had ample opportunity to have investigated the question to which Mr. McCollom refers.

I have no desire to cut Mr. McCollom short; if he at this last minute or last second finds something more to muddy the record with, all right. He is entitled to that opportunity.

But my practical suggestion is that the Examiner fix a date for briefs, and fix a date which need not be a month, say, let it be two weeks from now, and if Mr. McCollom has any more to offer on that date two weeks from now we can all come down and attend the taking of that testimony. Otherwise, let the record be considered closed as of today, and fix a date for filing of briefs which may give counsel opportunity to take into account any such testimony that may be introduced two weeks from today.

To make it concrete, I would suggest that briefs be filed by December 20th by all the parties.

Examiner Wilkinson: Mr. Swaine; we cannot fix a date for filing briefs until the case is closed, under the Com- [2312] mission's rules.

I appreciate what you have said, and certainly it is the desire of the Examiner and the Commission to close these cases up if possible.

I would like to ask now, if you do not mind, diverting just a moment from Mr. McCollom, as Mr. McCollom's position is clear, does the Railroad Credit Corporation have anything to produce at this hearing?

Mr. Willard: Probably not, Mr. Examiner, but we do not have all the facts before us. I gather Mr. Swaine's suggestion is that we shall prepare our briefs before we know whether there is anything more to go in.

Examiner Wilkinson: That has been disposed of.

Mr. Willard: We would like to know all the facts before we are called upon to prepare a brief and we state our position finally. We have relied on counsel for the Trustee to make the case. We have not made the effort to do it ourselves, as to priority. I think perhaps it is a little bit of a wrong picture to say that a plan has been negotiated for many months, implying that we had had part in it. We did not. We were not consulted when the plan was being prepared, and we came into the picture after the picture was all drawn.

We think that the Trustee for the General Mortgage should have an opportunity to make an examination of the [2313] records and to put in the record in this case whatever seems to be necessary to establish our rights as bondholders.

Examiner Wilkinson: As far as the Railroad Credit Corporation is concerned, at least at the present time, you have nothing ready, and so far as you know you do not intend to put any testimony in, yourself?

Mr. Willard: That is our present intention.

Examiner Wilkinson: Does the Reconstruction Finance Corporation have any evidence it wants to offer at this hearing?

Mr. Homire: No further evidence to offer at this hearing; except that at the last hearing it was understood that we would obtain copies of the Commission's valuation report on the Western Pacific, and I have those here now. I do not believe these have been assigned an exhibit number.

Examiner Wilkinson: At the same time some of the parties made a suggestion that it might be possible to get together and to stipulate certain facts rather than put in the whole report. Has there been any effort along that line?

Mr. Homire: I understood that they would be produced here.

Examiner Wilkinson: All right, if you want to do it. [2314] I just want to know if there is any possibility, rather than put in the entire report—

Mr. Homire: It has not been done.

Examiner Wilkinson: To stipulate as to the facts in there that you want in the record.

Mr. Nicodeimus: I would like to undertake to stipulate.

Mr. Homire: That has not yet been done, but I should suppose that we could make the same reservation that is already in as to other evidence, at least as I understand it, that if they want to eliminate it from the record we could stipulate that later.

(Discussion off the record.)

Mr. Homire: We offer the report.

Examiner Wilkinson: The report of the Interstate Commerce Commission in Valuation

Docket No. 126, Western Pacific Railway Company, is received as Exhibit No. 104.

(Exhibit No. 104, by Counsel, received in evidence.)

Examiner Wilkinson: Do you have anything further, Mr. Homire?

Mr. Homire: No, not now.

Mr. Nicodemus: I have one thing further. I would like to have a little time in which to formulate a motion to strike out a great many exhibits that I think can be eliminated. I am quite serious about that.

Examiner Wilkinson: In view of the fact that there [2315] has been a general substitution of the General and Refunding Mortgage Trustee, and that a new one has been appointed only within the last day or two, much as the Examiner would like to close the record, he cannot do so. We will adjourn until December 9th.

Mr. Coulson: Mr. Examiner, I suggest for the convenience of the Commission and to avoid relegateing a matter of computation to the briefs, that there be prepared for the various plans before the Commission statements similar to those that the Commission has required in other hearings, showing the effect on the tax expenses of the property of the distribution of income required by the various plans. I have special reference, of course, to the application of the undistributed corporate surplus tax law to plans which require a continuous segregation of income either by way

of providing for capital expenditures or for sinking funds or for other non-distributable purposes.

Examiner Wilkinson: Do you want to put in a statement like that?

Mr. Coulson: It does not apply to the plan I filed, but applies to the other two plans. I think Mr. Nicodemus and Mr. Swaine ought to charge themselves with responsibility for presenting exhibits at the next meeting for their two plans.

[2316]

Mr. Nicodemus: I think Colonel Coulson is an outstanding authority on taxes, and he should prepare that statement.

Mr. Coulson: That would be making it a matter of stipulation.

Mr. Swaine: It requires a great deal of stipulation.

Mr. Coulson: I would rather have Mr. Swaine's office do it as to his plan.

Mr. Swaine: So far as our plan is concerned—and that is true as to the Debtor's plan—that is entirely permissive. If the Board of Directors feels that the tax burden would be less if they did not want to apply income to capital expenditures, they do not have to under our plan. The state of the tax law as it was at the time the problem arose would be the thing that the Directors took into account. You would have to make all sorts of hypotheses. I do not believe it will help very much to make that.

Mr. Coulson: I did not so understand Mr. Swaine's plan, but I will reexamine it from that point of view. If his plan does involve any compulsory segregation of income, then I would respectfully request that the Commission have in this proceeding as in other similar proceedings a statement showing the effect of the additional tax burden. [2317]

Mr. Nicodemus: I would like to give a warning that in the next hearing if he suggests two weeks for filing briefs, that will be wholly satisfactory to us. That is not an adequate time for the preparation of briefs. I do not think he was serious.

Mr. Swaine: I suggested 30 days today, with the hearing in two weeks.

Examiner Wilkinson: In answer to Mr. Coulson, the Commission will be very glad to receive the data.

We will adjourn now until December 9, 1936. (Whereupon, at 1:55 o'clock, pm., an adjournment was taken until December 9, 1936, at 10 o'clock, a.m.) [2318]

Before the
Interstate Commerce Commission
Finance Docket No. 10913

WESTERN PACIFIC RAILROAD
COMPANY REORGANIZATION.

Ante Room A,

Interstate Commerce Building,
Washington, D. C.

Wednesday, December 9th, 1936.

The above-entitled matter came on for further hearing at ten o'clock a. m., pursuant to notice.

Before:

Examiners Harvey H. Wilkinson, and R. T. Boyden.

Aparances:

Same as heretofore noted.

Additional Appearances:

Ernest S. Ballard, 120 S. La Salle Street, Chicago, Illinois, and Mr. Philip A. Walker, Munsey Building, Washington, D. C., appearing for Missouri Pacific Railroad Company, intervening petitioner.

H. Brua Campbell, 35 Wall Street, New York, N. Y., appearing for Debtor. [2320]

PROCEEDINGS

Examiner Wilkinson: Are you ready to proceed, gentlemen?

Mr. Campbell: Mr. Examiner, my name is H. Brua Campbell, I am appearing here in the place

of my partner, Mr. Nicodemus, who is ill at St. Luke's Hospital, who asked me to appear here, and I would like to enter my appearance for the Debtor, if I may.

Examiner Wilkinson: Yes, sir.

Mr. Campbell: The debtor desires to produce the corporate history of the debtor.

This was prepared in San Francisco and is introduced at the request of Examiner Boyden. We have tried to make it as complete as possible and give information which will be useful. If it contains any statement as to the respective liens of the first mortgage and the general and refunding mortgage, or any other mortgage, which is a legal conclusion, we understand that no one is bound thereby, not even the debtor. It is offered solely for the factual data which it contains, and we ask that it be received as Exhibit No. 105.

Mr. McCollom: May it please the Examiners, may I ask whether I am correct in understanding that in the preparation of this statement the company did not [2322] intend to make any statement with reference to the relative liens as between mortgages?

Mr. Campbell: This is off the record, for the time being.

Mr. McCollom: We do not object to the statement as long as it is understood that nothing contained in the statement is to be taken as stating the railroad's position with reference to liens of mortgages, or that nothing contained in the state-

ment is to be taken as being important with reference to the question of relative liens of the mortgages from the point of view of law.

We stand on the provisions of the general and refunding mortgage, which of course, cannot be modified by a statement of this nature.

Mr. Swaine: Of course the statements of the debtor cannot bind anyone affected by them, we believe. On the other hand they are admissions by the debtor, so far as the debtor is concerned, and I think the document must stand on its face for what it is worth.

Mr. McCollom: The language of the general and refunding mortgage on page 23, after describing the property covered by the mortgage, states as follows:

"Subject, however, insofar, but only insofar as in law the same respectively may attach to [2323] any part or parts of the trust estate to existing liens and charges of record * * * including the first mortgage."

I should object to the introduction of the statement, if Mr. Swaine proposes that it be in the record, even for the limited purpose for which he states that he finds it should be in the record.

Examiner Wilkinson: Mr. McCollom, I do not see how you can represent the debtor, and this is a statement presented by the debtor in response to a request of the Examiner for a corporate history of the Western Pacific. The Examiner, of course,

has not read it, but naturally it does not bind other parties.

We take it that this is a statement by the debtor as to its corporate history, and it will be received as Exhibit No. 105.

Mr. Coulson: Before you rule that this be received, may I enter a formal objection to this document? I have been handed this document of 35 pages and it contains extended exhibits and tabulations, having received it just at this moment. I have no knowledge what facts are in it, but its probative value, if any, as to factual basis must arise solely from the fact that it is presented by counsel for the debtor.

Creditors appearing in this proceeding—and I [2324] represent one of the Junior Creditors—should have an opportunity to examine this as to the facts presented, and as to the necessity of cross examination with reference to any of the facts.

I object to the admission of the exhibit on the basis that no foundation has been laid for it as to relevancy and competency, and if it is accepted by the Examiner, I ask that it be accepted subject to a motion to strike out or to a request on the part of any interested creditor for the right to cross examine insofar as factual data in this statement is concerned.

I have never seen it before.

Mr. Clay: The R. F. C. objects on the same ground.

Examiner Wilkinson: In view of the objection of Mr. Coulson that he has not had time to examine it, we will strike out the receipt of this document and will reserve ruling on it until the close of the hearing.

(Informal discussion off the record.)

Examiner Wilkinson: We will proceed.

Mr. Ware: Mr. Examiner, may I interrupt a moment before you proceed?

I have an intervening petition to offer here, and if this is the proper time, I should like to offer it.

Mr. Campbell: We have another exhibit which we [2325] would like to offer.

Examiner Wilkinson: While we are on the record here, let us finish with that. Let us see the petition.

Mr. Ware: This is a petition filed on behalf of the Missouri Pacific Railroad Company, Guy A. Thompson, Trustee, and this is the original petition. I have sufficient copies to go around.

Mr. Swaine: The Institutional Bondholders' Committee objects to the introduction of the Missouri Pacific petition.

Mr. Campbell: The debtor objects to the intervention of the Missouri Pacific Railroad Company, or its Trustee, on the ground it is not a party within the meaning of Section 77, and that its admission will unduly delay the proceedings.

Mr. Ballard: If your Honors please, my name is Ernest S. Ballard and I have a matter relating to which I think something should be presented now.

I am the attorney for the Missouri Pacific Railroad Company, Debtor, as distinguished from the Trustee and I have a petition of intervention here—I do not mean debtor in these proceedings but in another proceeding—and I have a petition of intervention on the behalf of the Missouri Pacific Railroad Company, which I ask leave to file, and at the proper time I am [2326] prepared to be heard on it. I have copies for counsel:

Mr. McCollom: The Trustee under the General and Refunding Mortgage has not seen the petition, and we believe we should withhold statement of our position until we have seen and examined it.

Mr. Swaine: The objection of the Institutional Bondholders' Committee goes to the attempted intervention of the Trustee and the attempted intervention of the Missouri Pacific itself.

Mr. Campbell: The objection of the debtor likewise goes to both the attempted intervention of the Trustee and the attempted intervention of the Missouri Pacific itself.

Examiner Wilkinson: It is necessary, before the Examiner can rule upon this question, to have time to look at these petitions.

Mr. Coulson: Mr. Examiner, I would like to enter an objection to both petitions of intervention; and I would like to be heard as to the grounds of my objection at an appropriate time.

Examiner Wilkinson: At an appropriate time the question will be raised.

Do you have anything further, Mr. Campbell?

Mr. Campbell: Yes, Mr. Examiner. The Debtor desires to introduce a statement prepared by Mr. M. J. Curry, [2327] showing the delivering dates to pledgees of \$18,999,500 principal amount of General and Refunding bonds. This was requested both by Mr. Swaine and Mr. McCollom. We ask that it be received as Exhibit No. 106, and with the introduction of that, the Debtor has finished its case in chief.

We understand, however, that other counsel will wish to introduce evidence.

Examiner Wilkinson: Is there any objection to this document by counsel?

Mr. Caulson: May we have an opportunity to examine it?

Examiner Wilkinson: The document will be marked for identification as Exhibit No. 106 and not received at this time but just marked.

(Exhibits Numbers 105 and 106, by Counsel, were marked for identification.)

Examiner Wilkinson: Do you have anything further, Mr. Campbell?

Mr. Campbell: Not at this point.

Examiner Wilkinson: Mr. McCollom, do you have anything at the present time?

Mr. McCollom: The present situation in this case, Mr. Examiner, arises from the fact that the Institutional Committee of First Mortgage Bondholders has [2328] proposed a plan based upon the assumption that the first mortgage is a prior lien upon all property of the Railroad Company and,

therefore, that they must receive for all indebtedness due to them securities which shall out-rank all other securities to be issued. No plan can possibly be based upon such an assumption. There might be more basis for such an assumption if the law were that a first mortgage and the after acquired property clauses presumably cover all property of the Railroad Company. The fact is that the law is exactly to the contrary.

In Mortgage Foreclosure cases presenting a plan of reorganization, the First Mortgagee asserts the coverage of his mortgage upon all property and must prove it. That is an accepted practice. There is nothing whatever in Section 77 to indicate that any other rule applies in 77 proceedings.

Therefore, after the last hearing, and after analyzing the situation, we wrote a letter to Mr. Swaine, dated December 4th, 1936, and sent copies to the Examiner and to the parties. I think it might be appropriate if that letter were either marked in evidence or copied into the record. I have a copy of it here with me.

Examiner Wilkinson: Do you have sufficient copies [2329] for the parties?

Mr. McCollom: They have already gone to the parties. I have two extra copies with me.

Examiner Wilkinson: This letter of December 4, 1936, will be received as Exhibit No. 107.

(Exhibit No. 107, by Counsel, was received in evidence.)

Mr. McCollom: Although the burden is upon the first mortgage, we think that the Commission and the First Mortgage Bondholders are entitled to an indication, so far as we can presently give it, of the classes of property as to which it is asserted either that the property is not subject to the first mortgage or that it is subject to that mortgage, only to the limit of extent that first mortgage monies were expended upon the property.

This we have tried to do by the letter of December 4th, which has just been offered.

Since the last hearing my partner, Mr. Judd, has spent practically all of his time, and I have spent a great amount of my time, in investigating the facts, but it will be understood, I am sure, that in the limited time which we have had, it has not been possible to study all of this property and the facts surrounding all of this property, and to be certain, [2330] that there may not be items not mentioned in our letter which are free from the first mortgage.

Of course, the question of whether a mortgage covers property is very largely a question of fact, and also a question of very detailed fact in many cases.

The classes of property which are mentioned in our letter are all of them classes of property which have been held to be free from First or underlying mortgages.

We have some evidence to introduce today which we believe may aid the Commission, but in intro-

dueing this evidence it should be understood that we are not departing to any extent whatever from our position that it is not our burden to disprove the case of the first mortgage bondholders.

Inasmuch as my partner, Mr. Judd, is more familiar with the details of the evidence than I, I think it would save time if Mr. Judd were to introduce the evidence which we have to offer.

Examiner Wilkinson: Your appearance is entered, Mr. Judd?

Mr. Judd: Yes, sir, at the last hearing.

Mr. Curry, will you take the stand? [2331]

M. J. CURRY

testified further as follows:

Direct Examination

Q. (By Mr. Judd) Mr Curry, at the time that Western Pacific Railroad Company was organized in 1916, did its certificate of incorporation include any reference to the Northern California Extension?

A. To the best of my knowledge, it did not.

Q. You have examined the certificate and you know that that is a fact? A. That is a fact.

Q. Can you tell me when the reference to the Northern California Extension was included in the certificate of incorporation approximately?

A. Approximately the year 1927, I think it was —no, pardon me. 1929, I think it was.

(Testimony of M. J. Curry.)

Q. Have you any documents from which you can refresh your recollection?

A. (Examining papers) April 8th, 1929, is correct.

Q. Can you tell me what the total amount of expenditure on account of land for transportation purposes was in connection with the Northern California Extension?

A. Have you a statement there?

Q. I have a copy of one of your statements (handing [2332] paper to witness).

A. The total charges to June 30th, 1932, in connection with the Northern California Extension under Account 2-Land for transportation purposes, amounted to \$376,662.17.

Mr. Judd: Mr. Wood, just to be sure of the record, I would like to be assured by you that Exhibits Nos. 62 to 73, as they were cut down at the last hearing, still include the certificates by detailed accounts against which the first mortgage money was requisitioned?

Mr. Wood: That is my recollection, that these certificates went in in toto.

Mr. Judd: If they are physically a part of the record, I think we can assume they are before the Commission.

Mr. Wood: That is subject to correction by looking at the record, but that is what I recall.

Mr. Judd: I would like to ask, Mr. Examiner, that in the event that the portion of those exhibits

(Testimony of M. J. Curry.)

which include the description of the accounts on which expenditures were made, and as a basis for which First Mortgage money was requisitioned, may be considered by the Commission, if they are not in the parts of those exhibits which have been introduced. [2333]

Examiner Wilkinson: That will be done, if you will identify it on the record with sufficient definiteness so that we know just what it is.

(Informal discussion off the record.)

Q. (By Mr. Judd) Mr. Curry, have you produced a copy of the Equipment Trust Agreement dated March 1, 1923, covering certain equipment of the Western Pacific Railroad?

A. I have, yes sir.

Mr. Judd: I offer that in evidence. We have copies to distribute, Mr. Examiner.

The Witness: That is the 1923 one.

Examiner Wilkinson: Is there objection?

(No response.)

Examiner Wilkinson: It will be received as Exhibit No. 108.

(Exhibit No. 108, Witness Curry, was received in evidence.)

Q. (By Mr. Judd) Have you prepared also, Mr. Curry, a copy of the Equipment Trust Agreement dated March 15, 1924, covering such equipment?

A. I have such an agreement in hand.

(Testimony of M. J. Curry.)

Q. Will you read me from page 2 of that agreement the equipment which it covers and the estimated cost?

A. "(a) 5 heavy Mikado Locomotives lettered W.P. and [2334] numbered 322 to 326 both inclusive;

"(b) 5 Mallet Locomotives, lettered W.P. and numbered 206 to 210 both inclusive;

"(c) 775 steel underframe refrigerator cars, lettered P.F.E. and numbered 52001 to 52775, both inclusive;

"(d) 100 logging cars lettered W.P. and numbered 2701 to 2800 both inclusive;

"(e) 200 steel underframe automobile cars lettered W.P. and numbered 14101 to 14300 both inclusive;

"(f) 1 Jordan spreader, equipped with composite ditching and spreading wings, lettered W.P. and numbered 9.

"Together with such additional railroad equipment as shall be required for said trust and subjected to this lease as hereinafter provided.

"The estimated cost of the railroad equipment above specifically described, when completed, has been certified to the trustee to be approximately \$3,881,250."

Q. What is the amount of the Equipment Trust Certificates issued under this agreement?

(Testimony of M. J. Curry.)

A. Total issue 5½ per cent Equipment Trust Certificates Series C, \$3,105,000. [2335]

Q. Can you find on pages 4 and 5, I believe it is, the number and amount of installments payable on those certificates?

A. "The principal of the Trust Certificates when and as the same shall become payable, whether by declaration or upon the respective dates of maturity thereof, towit:

"December 1, 1924—\$207,000."

Q. How many installments of \$207,000 are listed?

A. 15 installments of \$207,000, maturing December 1st, each year, from December 1, 1924 to December 1, 1938 inclusive.

Q. Now, Mr. Curry, apart from the units described, the dates and the amounts referred to therein, can you state that this Equipment Trust Agreement is substantially similar to the agreement already marked in evidence as Exhibit No. 108?

A. I think I can safely make that statement, yes.

Examiner Wilkinson: Are you offering this Equipment Trust of 1924?

Mr. Judd: I have offered the 1923 Equipment Trust, and I have attempted to show that the Equipment Trust of 1924 is substantially the same in terms, although it covers additional equipment. I do not see that there is any necessity for putting those terms into [2336] the record a second time.

(Testimony of M. J. Curry.)

Q. (By Mr. Judd) Have you produced, Mr. Curry, a third Equipment Trust Agreement covering Series D Certificates and dated May 1, 1929?

A. I have such an agreement in hand, yes, sir.

Q. Can you read to me from page 2 of that agreement the items of equipment which it covers?

A. The listing is as follows:

- (a) 5 Heavy Mikado locomotives, lettered W. P. and numbered 332 to 336 both inclusive;
- (b) 50 Steel Tank Cars lettered W. P. and numbered 1,201 to 1,250 both inclusive;
- (c) 50 50 foot flat cars, lettered W. P. and numbered 2,301 to 2,350, both inclusive;
- (d) 150 automobile cars with steel ends, lettered W. P. and numbered 12001 to 12150 both inclusive;
- (e) 100 automobile cars with end doors one end and steel end other, and lettered W. P. and numbered 13001 to 13100, both inclusive.

Together with such additional railroad equipment as shall be acquired for said Trust and subjected to this lease as hereinafter provided.

The estimated cost of the above railroad equipment, described, when completed, has been certified to [2337] the trustee to be approximately \$1,369,-827.30.

Q. What was the total amount of the certificates of Series D issued under that equipment trust agreement?

A. The 5 Per Cent Agreement Trust Certificates Series D, total issue, \$1,095,000.

(Testimony of M. J. Curry.)

Q. Can you tell me the number and the amount of the installments payable on those equipment trust certificates, and when they were payable?

A. The principal of the trust certificates, when and as the same shall become payable, whether by declaration or upon the respective dates of maturity thereof, towit, beginning November 1, 1929 to and including November 1, 1943, \$73,000 per annum.

Is that sufficient?

Q. That is sufficient. Except with respect to the units covered, the dates and the amounts which you have already referred to in this agreement substantially the same in form as the equipment trust agreement which has been marked Exhibit No. 108, and the equipment trust agreement dated March 15th, 1924? A. I believe it is, yes, sir.

Q. Who is the trustee under these equipment trust agreements at the present time?

A. The Chase National Bank of the City of New York; as successor to the Equitable Trust Company of New [2338] York.

Q. Under all three? A. Under all three.

Q. Will you produce, Mr. Curry, a lease from the Baldwin Locomotive Works to the Western Pacific Railroad Company, dated June 5th, 1931?

A. I have such a lease of locomotives, dated June 5, 1931, by the Baldwin Locomotive Works to the Western Pacific Railroad Company.

Mr. Judd: I offer that in evidence.

(Testimony of M. J. Curry.)

Examiner Wilkinson: Is there any objection?

(No response.)

Examiner Wilkinson: It will be received as Exhibit No. 109.

(Exhibit No. 109, Witness Curry, was received in evidence.)

Q. (By Mr. Judd) This lease refers, Mr. Curry, to payments to be made semi-annually, dating from the average weighted delivery date of all six locomotives hereunder, reading from Page 2. Is there a letter which fixes that average weighted delivery date?

A. Yes, there is such a letter, dated July 31, 1931.

(Producing document.)

Mr. Judd: I offer that letter in evidence.

Examiner Wilkinson: Any objection? [2339]

(No response.)

Examiner Wilkinson: It will be received as Exhibit No. 110.

(Exhibit No. 110, Witness Curry, was received in evidence.)

Mr. Judd: Are you familiar, Mr. Curry, in general, with the provisions of Article V, of Section 16, of the General Mortgage, General and Refunding Mortgage, requiring the Western Pacific Railroad Company to furnish annually to the Trustee under that mortgage a list of the equipment covered by it?

The Witness: I am familiar with such provision in the mortgage.

(Testimony of M. J. Curry.)

Q. (By Mr. Judd) Have you produced a list furnished to the Trustee of the General and Refunding Mortgage, under date of February 12th, 1936?

A. We have such a document here.

(Producing document.)

Mr. Judd: I offer that in evidence.

The Witness: It is a photostatic copy.

Examiner Wilkinson: Is there any objection?

(No response.)

Examiner Wilkinson: The document just referred to and consisting of 6 sheets, will be received as Exhibit No. 111. [2340]

(Exhibit No. 111, Witness Curry, was received in evidence.)

Q. (By Mr. Judd) The numbers describing the equipment listed on this statement, Mr. Curry, correspond do they not, to the numbers opposite specific types of equipment, on Exhibit No. 15, already in evidence? A. They do, yes, sir.

Q. The numbers listed in the statement as descriptive of equipment covered under the Equipment Trust Agreements would include reference to any equipment which has been renumbered or any equipment placed under those agreements pursuant to the requirements to replace worn out or destroyed equipment? A. Yes.

Q. Are you familiar in a general way with the manner of making the initial payment on account of this equipment, and the payments of installments coming due subsequently? A. I am, yes, sir.

(Testimony of M. J. Curry.)

Q. Can you tell me whether those payments were made out of proceeds of First Mortgage bonds or out of free funds of the company?

A. I cannot—you mean the 20 per cent payment?

Q. The 20 per cent payment and later payments.

A. My recollection is that that payment was made out [2341] of free funds.

Q. You do not know of any payments which were made out of First Mortgage Bonds on account of these items of equipment? A. I do not.

Mr. Groom: When you say "items of equipment", you mean just those under the equipment trust?

Mr. Judd: Yes, sir.

Mr. Swaine: You are not referring to this list, which is all the equipment the company owns?

Mr. Judd: No, I am referring to the three equipment trusts and the Baldwin Locomotive Lease, the only ones under which there was any initial payment.

Mr. Swaine: You appreciate that the statement introduced was a list of all the equipment the company owns. The First Mortgage Bondholders do not question that all that equipment is subject to the General and Refunding Mortgage, but subject also to the first mortgage.

Mr. McCollom: All of what equipment?

Mr. Swaine: All of the equipment embraced in this list, which is all the equipment which the company owns. This list which was introduced is not confined to the equipment trust agreement.

(Testimony of M. J. Curry.)

Mr. Judd: It includes all the equipment under the [2342] equipment trust agreement.

Mr. Swaine: It includes all the equipment which the company owns.

Mr. McCollom: Mr. Swaine, have you any question that the equipment under the three equipment trusts and the Baldwin Locomotive Lease is free from the first mortgage?

Mr. Swaine: I have a distinct question, and I will ask Mr. Curry, when you get through with him a question which will establish that it is under the first mortgage.

Q. (By Mr. Judd) Have you produced a copy of the listing application submitted to the New York Stock Exchange in connection with the listing of the last series of bonds issued under the first mortgage at \$645,000, authorized by the Interstate Commerce Commission on October 17th, 1931?

A. I have produced such listing application.

Mr. Judd: I offer that listing application in evidence. I am sorry I have not copies of that at the present time, but I will say that one of the purposes for which it is introduced is to show the statement on page 4 thereof in the description of property, on which the mortgage constitutes a first lien, that:

"The foregoing equipment does not include [2343] additional unmortgaged equipment covered by Equipment Trust Agreements, Series 'B' and Series 'C' and Series 'D', as follows:"

(Testimony of M. J. Curry.)

Do you want to look at it before it goes in?

Mr. Swaine: No.

Examiner Wilkinson: Any objections?

Mr. Swaine: None at all.

Examiner Wilkinson: It will be received as Exhibit No. 112.

(Exhibit No. 112, Witness Curry, was received in evidence.)

Examiner Wilkinson: You will furnish the necessary copies?

Mr. Judd: I will do that as promptly as possible.

Q. (By Mr. Judd) Can you tell me, Mr. Curry, what the mileage operated by the Western Pacific Railroad Company was on, or about June 14th, 1916?

A. The first annual report for the calendar ended December 31, 1916 shows the railroad company's operations from July 14th, the date of the reorganization, to December 31st, average mileage operated as 942.98.

Q. Are you familiar in a general way, Mr. Curry, with the branches and extensions described in the General and Refunding Mortgage of the Company dated January 1, 1932? [2344]

A. In a general way, yes, sir.

Q. Have any of those branches or extensions been abandoned since the execution of that mortgage? A. Not to my knowledge.

Q. Mr. Curry, in the balance sheet of the Railroad Company as of December 31, 1935, there is an

(Testimony of M. J. Curry.)

item of Miscellaneous Physical Property listed of \$3,856,127.99. Is that the same item which appears in somewhat greater detail in Item 212 of the Company's Annual Report to the Interstate Commerce Commission for December 31, 1935?

A. It is, yes, sir.

Q. Does that embrace substantially the same property which is listed in considerably greater detail in the same item of the company's annual report to the Interstate Commerce Commission for December 31, 1934? A. It is, yes, sir.

Q. That is for the years ended December 31, 1935 and December 31, 1934? A. That is right.

Mr. Judd: I offer in evidence copies of items 212, as it appears in the 1935 and 1934 reports to the Interstate Commerce Commission listing miscellaneous Physical Property:

Mr. Groom: May we see it? [2345]

Examiner Wilkinson: Any objection?

Mr. Swaine: May we see it first?

(Discussion off the record.)

Mr. Swaine: We have no objection to this document.

Examiner Wilkinson: Schedule No. 212, Miscellaneous Physical Property for the year ending December 31, 1934 of the Western-Pacific Railroad Company, as shown on four sheets, will be received as Exhibit No. 113.

(Exhibit No. 113, Witness Curry, was received in evidence.)

(Testimony of M. J. Curry.)

Examiner Wilkinson: Schedule No. 212, Miscellaneous Physical Property for the year ending December 31, 1935 of the Western Pacific Railroad will be received as exhibit No. 114.

(Exhibit No. 114, Witness Curry, was received in evidence.)

Examiner Wilkinson: Will you furnish copies of the last statement, Mr. Judd?

Mr. Judd: Yes, sir, I will furnish copies.

Examiner Wilkinson: At the same time please furnish an extra copy of No. 113.

Mr. Judd: Here is an extra copy.

(Producing document.)

Examiner Wilkinson: Thank you.

Q. (By Mr. Judd) Have you produced, Mr. Curry, a copy [2346] of the Reorganization Plan of the Western Pacific Railway Company, dated June 15th, 1915, at the time of the first reorganization of the property? A. I have.

Q. Will you read me from page 8 of that plan the statement which it makes with reference to the First Mortgage Gold Bonds proposed to be issued, pursuant thereto?

Mr. Swaine: I would like to object to that, because the fact that it may have been proposed in some other proceeding to create a different kind of mortgage than was created has no bearing upon the meaning of the document which was ultimately created. The mortgage speaks for itself irrespective of any prior claim about it.

(Testimony of M. J. Curry.)

Mr. Judd: If your Honor please, the first mortgage with which we are concerned in this proceeding was issued as a part of a reorganization of the Western Pacific Railway Company, which began in 1915, and was effectuated in 1916.

The Exhibit which has just been introduced in evidence listing miscellaneous physical property introduced certain items of non-carrier property, some of which we believe, although our information on it is still incomplete, was owned before the organization of the present railroad company. [2347]

We feel—

Examiner Wilkinson: Just a moment. We have been receiving a lot of evidence, and I do not think this makes much difference. So, go ahead.

Mr. Swaine: On the ground that the Commission regards it as irrelevant, I will withdraw my objection.

Mr. McCollom: It is not irrelevant, as a matter of fact, Mr. Swaine.

Mr. Swaine: We can argue that.

Examiner Wilkinson: The statement of counsel will speak for itself.

Q. (By Mr. Judd) Will you read the provisions to which I have referred?

A. Quoting from page 8 of the Western Pacific Railway Company's Plan and Agreement of Reorganization, dated December 15, 1915;

"First Mortgage Gold Bonds (New Bonds) authorized issue \$50,000,000, to be secured by

(Testimony of M. J. Curry.)

first mortgage upon all existing Railway properties of the old company and all property hereafter acquired by the operating company integrally connected therewith, and all property acquired by means of the use of proceeds of the new bonds or against which new bonds will be issued."

Q. I call your attention, Mr. Curry, to items 372 and [2348] 374 in the annual report to the Interstate Commerce Commission for the year ended December 31, 1935, and ask you whether those two items include the rent received by the Railroad Company from the items of miscellaneous property listed in Exhibits Numbers 113 and 114?

A. Yes, it is my belief that they cover such items.

Q. How many pieces of property are referred to under Account No. 372?

A. In this report for the year ended December 31, 1935?

Q. Yes, sir.

A. Minor items 291 in number, each less than \$5,000 per annum.

Q. How many are referred to in Account No. 374?

A. Minor items 106 in number, each less than \$25,000.

Mr. Judd: I offer in evidence copies of those two items in the annual report to the Interstate Commerce Commission, dated December 31, 1935.

(Testimony of M. J. Curry.)

Examiner Wilkinson: Any objection.
(No response.)

The document relating to the income for lease of road for the year ended December 31, 1935 will be received as Exhibit No. 115.

(Exhibit No. 115, Witness Curry, was received in evidence.) [2349]

Examiner Wilkinson: The tabulation headed "Miscellaneous Non-Operating Property", will be received as Exhibit No. 116.

(Exhibit No. 116, Witness Curry, was received in evidence.)

Q. (By Mr. Judd) Can you tell me, Mr. Curry, the amount of cash of the Railroad Company on August 2, 1935, when the petition instituting this proceeding was approved?

A. As of July 31, 1935 the cash balance in all banks was \$848,452.30.

Q. That is as of the close of business on July 31st?

A. Yes, sir. That is as of the close of business on July 31st 1935.

Q. Have you any information as to a date nearer August 2nd, than July 31st?

A. Not with us.

Mr. Judd: I might say that we have tried to get that from San Francisco, but have not yet had a reply, Mr. Examiner.

Q. (By Mr. Judd) Can you tell me the amount of cash of the Railroad Company on November

(Testimony of M. J. Curry.)

13th, 1935, the date of the qualification of the Trustees in reorganization?

A. The cash balances per bank statements at close of [2350] business November 13th, 1935 in all banks amounted to \$1,529,643.36.

Q. Mr. Curry, referring back to the exhibit from the 1934 report to the Interstate Commerce Commission, I note Item, Line 111, "Property for non-carrier purposes", listed at \$1,579,689.57. Have you any idea as to any of the property included in that item?

A. I have not. I did not prepare this statement. That is a question, I think, for the General Auditor to answer.

Q. Do you know whether any of it includes the Islais Creek property of the Railroad?

A. I do not from this statement here.

Q. Can you state from reference to a telegram which I hand you, which we have received from San Francisco Counsel, whether any portion of it represents the Islais Creek property of the Railroad?

(Handing telegram to witness.)

A. This telegram I assume is in answer to an inquiry made by you upon your representatives in the west, who went to our offices and secured the information.

Q. Yes, sir.

A. And I assume it is correct. It is stated in here that "Miscellaneous Property, Transfer of all

(Testimony of M. J. Curry.)

Property acquired prior to July 14th, 1916, major item being [2351] Islais Creek Property San Francisco."

Q. Can you tell me in a general way what this Islais Creek Property consists of?

A. This is a vast tract of land on San Francisco Bay, which was under water mostly, and it was thought it would make a great industrial center, and subject to considerable development; and subsequently action was taken bringing about the use of this district in that way.

Mr. Judd: That is all that we have of Mr. Curry, Mr. Examiner.

Cross Examination

Q. (By Mr. Swaine) Mr. Curry, was the equipment which was embraced in the list delivered to the Trustee under the General and Refunding Mortgage, including the equipment covered by the three equipment trusts and by the Baldwin Lease, acquired by the Western Pacific for use in the operation of any lines of railroad, extensions or branches subject to the lien of the first mortgage?

Mr. Coulson: I object to the form of the question, asking for the conclusion of the witness and not for factual testimony.

Mr. Swaine: I asked if it was acquired for use in connection with that. [2352]

Mr. Coulson: If it is to be answered, it seems to me it should be in answer to a question as to what

(Testimony of M. J. Curry.)

lines it is used on, whether the main line or Northern California?

Mr. Swaine: We will try to make the question satisfactory to Mr. Coulson.

Q. (By Mr. Swaine) Was it acquired in connection for use in the operation of any of the lines of railroad which are described in the granting clauses of the First Mortgage of the Western Pacific Railroad Company, dated June 26th, 1916?

A. It was acquired for use on all lines, main line and branches.

Q. Including the lines specifically described in that agreement?

A. Including the lines specifically described in that agreement.

Q. That applies equally to the equipment embraced in the Equipment Trust Agreements, does it not? A. It does.

Q. And the Baldwin Lease?

A. To my knowledge, it does.

Q. Has it in fact been so used?

A. It has.

Q. Now with reference to this free cash and the other [2353] so-called free assets in 1934, Mr. Curry, did not the Western Pacific seek from the First Mortgage Bondholders an extension of interest? A. It did.

Q. Interest for what period?

A. Interest due March 1, 1934 and September 1, 1934 on the first mortgage 5 per cent bonds to

(Testimony of M. J. Curry.)

January 1, 1937, the extension of those interest payments.

Q. Do you know approximately what proportion of the First Mortgage Bonds was extended as to interest?

A. It is my recollection that approximately \$43,000,000 principal amount of bonds, or 87 per cent of the outstanding bonds assented to the plan of deferment.

Q. In that connection, did the Western Pacific Railroad Company enter into certain agreements with the Reconstruction Finance Corporation, Railroad Credit Corporation, the A. C. James Company and the Western Pacific Corporation with regard to the lien of the extended interest of the First Mortgage Bonds? A. It did.

Mr. Judd: I object to the reference to an unidentified agreement which has not been received.

Mr. Swaine: I will proceed to identify them now.

Q. (By Mr. Swaine) I show you a photostatic copy of a letter on the letterhead of the Reconstruction [2354] Finance Corporation, dated June 23, 1934, and signed by Jesse H. Jones, Chairman, being addressed to the Western Pacific Railroad Company. Mr. Clay will remember it. I will ask you whether that is a photostatic copy of an agreement entered into between the Debtor and the Reconstruction Finance Corporation?

(Handing paper to witness.)

(Testimony of M. J. Curry.)

A. It is, yes, sir.

Mr. Swaine: I offer that in evidence as the next Exhibit number.

Mr. Judd: We want our objection noted, Mr. Examiner. We would like to have a chance to look at it before specifying all the grounds of objections.

Mr. Swaine: Next to that photostat—I thought they were separate—and constituting the third and fourth pages is a document on the letterhead of A. C. James Company, dated July 2, 1934, and signed by A. C. James Co., by E. Hayward Ferry, Vice President. Is that one of the agreements which was taken in connection with the extension of the First Mortgage Bond interest?

(Handing paper to witness.)

A. It is.

Q. Following that, constituting pages 5 and 6, is a document on the letterhead of the Railroad Credit [2355] Corporation, dated July 3, 1934, addressed to Western Pacific Railroad Company and signed by The Railroad Credit Corporation, by E. R. Woodson, Vice President.

Is that also an agreement which was made in connection with the extension of the First Mortgage Bond interest? A. It is.

Mr. Swaine: Now, I offer the document in its entirety.

Examiner Wilkinson: Is there any objection?

Mr. Coulson: I object on the ground that the document is incomplete, unless Mr. Swaine also

(Testimony of M. J. Curry.)

puts into the record the extensive agreement with the First Mortgage Bondholders Committee, so-called.

Mr. Clay: And the supplements to that agreement.

Examiner Wilkinson: Are you in a position to do that, Mr. Swaine?

Mr. Swaine: Yes, sir.

Examiner Wilkinson: Will you do that?

Mr. Swaine: Yes, sir.

Examiner Wilkinson: The document consisting of 6 sheets will be received as Exhibit No. 117.

(Exhibit No. 117, by Counsel, was received in evidence.) [2356]

Mr. Swaine: I show you a photostat of a printed document under date of May 9th, 1934, on the letterhead of the Western Pacific Railroad Company, addressed to the Holders of the Western Pacific Railroad Company First Mortgage 5 per cent Bonds who have already executed agreements of extension dated as of March 1st, 1934 and ask you whether that is the document constituting the extension of the First Mortgage Bond interest, or is the extension agreement?

(Handing paper to witness.)

A. It is.

Mr. Coulson: May I ask a question about that? I have not seen it. I understood Mr. Swaine in presenting it said it referred to parties who had already executed an agreement of extension.

(Testimony of M. J. Curry.)

The Witness: That is the way it read.

Mr. Swaine: Off the record.

(Discussion off the record.)

Mr. Coulson: Are you going to introduce the Western Pacific Corporation Agreement to which you referred?

Mr. Swaine: Yes, sir, that is, I hope I am. I am going to offer it.

Examiner Wilkinson: The copy of the letter of May 29th, 1934, to the Western Pacific Bondholders [2357] will be received as Exhibit No. 118.

(Exhibit No. 118, by Counsel, was received in evidence.)

Mr. Clay: May I ask a question off the record?

(Discussion off the record.)

Q. (By Mr. Swaine) I show you a letter on the Western Pacific Railroad Corporation's letter-head under date of July 5th, 1934, addressed to the Western Pacific Railroad Company, signed the Western Pacific Railroad Corporation, by T. M. Schumacher, President, and ask you whether that is another one of the agreements taken in connection with the extension of first mortgage bondholders' interest?

(Handing paper to witness.)

A. It is.

Mr. Swaine: I offer that.

Examiner Wilkinson: Is there objection?

(No response.)

(Testimony of M. J. Curry.)

Examiner Wilkinson: This will be received as Exhibit No. 119.

(Exhibit No. 119, by Counsel, was received in evidence.)

Q. (By Mr. Swaine) I show you an agreement dated November 30th, 1934, between the Western Pacific Railroad Corporation and Frederick H. Ecker, John W. [2358] Stedman and Reeve Schley, as a Committee representing the First Mortgage Bondholders, and ask you whether that was an agreement entered into in connection with the extension of the first mortgage bond interest?

(Handing paper to witness.)

A. Yes, it is.

Mr. Swaine: I offer that as the next Exhibit.

Mr. McCollom: Mr. Examiner, with respect to these documents which are now going in, we have never seen them before, and it is absolutely impossible to read them and see whether we think there would be a proper objection.

We do not want to object unless we know there is some good ground of objection, but I think the right ought to be reserved to move to strike them out, whether in the brief or elsewhere.

Mr. Swaine: I may say that these are all agreements, a series of agreements, signed by all the holders of the bonds which Mr. McCollom represents. The First Mortgage Bondholders agreed to this extension, conditioned upon certain agreements by the R. F. C., the R. C. C., the A. C. James Com-

(Testimony of M. J. Curry.)

pany and the Western Pacific; and I am now introducing the agreements which were made by those companies who constitute all the holders represented by the bonds represented by Mr. [2359] McCollom.

Those parties are all represented here, and they participated with me in the actual drafting of the documents and know all about them.

Examiner Wilkinson: I hear no objection and the document will be received as Exhibit No. 120.

(Exhibit No. 120, by Counsel, was received in evidence.)

Mr. Clay: Off the record again.

(Discussion off the record.)

Q. (By Mr. Swaine) Mr. Curry, I show you a printed document on the letterhead of the Western Pacific Railroad Company dated July 25th, 1934, addressed "To all Holders of Western Pacific Railroad Company's First Mortgage 5 Per Cent Bonds (Whether or not they have previously executed any agreements of extension of interest)," signed the Western Pacific Railroad Company, C. M. Sehumer, Chairman of the Executive Committee and Charles Elsey, President, to which is annexed a copy of a letter dated July 23, 1934, from Jesse H. Jones, Chairman of the Reconstruction Finance Corporation, to the Western Pacific Railroad Company, on the letterhead of the Reconstruction Finance Corporation, and ask you whether that letter

(Testimony of M. J. Curry.)

was sent to the First Mortgage Bondholders in connection [2360] with the extension to which we have been referring?

(Handing paper to witness.)

A. It was.

Mr. Swaine: I offer that in evidence and will furnish additional photostatic copies to such parties as do not have them. I think every party who has appeared here has got printed copies of those. Those are printed documents which were a part of the negotiations with these very parties.

Examiner Wilkinson: Is there any objection?

Mr. McCollom: We have not seen it, Mr. Examiner. I have no idea.

Mr. Swaine: Let him look at it then.

In order that we can get the whole story and it will tie in—any objection they might have will go to the next one—the last paragraph of that says:

"There is enclosed herewith a form of Modified Extension Agreement (which includes a consent to such extension of time to September 30th, 1934), which The Railroad Company requests you to execute and return to The Chase National Bank of the City of New York, as Agent for the Railroad Company, whether or not you [2361] have executed any previous form of interest extension agreement."

Q. (By Mr. Swaine) I show you another document entitled "Modified Extension Agreement",

(Testimony of M. J. Curry.)

dated as of July 25th, 1934, and ask you whether that is the Modified Extension Agreement referred to in the second paragraph?

(Handing papers to witness.)

A. It is.

Mr. Swaine: I offer that in evidence.

Examiner Wilkinson: Is there any objection?

Mr. Coulson: Just a moment. May I look at them?

Mr. Swaine: I wanted to tie it up.

Q. (By Mr. Swaine) When you stated that 87 per cent of the bonds—

Examiner Wilkinson: Just a minute. Put that off a moment. You have offered them and I have asked if *there any* objections. Are there any objections?

Mr. Coulson: I object only on the ground that the record is still apparently incomplete, unless we have the agreements of extension of March 1, 1934, as to which Exhibit No. 119 is on its face a supplement. I understand there are still references to the agreement of March 1, 1934, and I think this series is incomplete without it. [2362]

Mr. Swaine: I am quite willing to complete it. These all supersede the earlier ones, and if there is any value in having them, we can get them.

Examiner Wilkinson: Then the document dated July 25th, 1934, consisting of three sheets will be received as Exhibit No. 121, and the Modified Ex-

(Testimony of M. J. Curry.)

tension Agreement dated July 25th, 1934, consisting of two sheets will be received as Exhibit No. 122.

(Exhibits Numbers 121, and 122, by Counsel, were received in evidence.)

Q. (By Mr. Swaine) When you said a little while ago, Mr. Curry, that 87 per cent of the bonds had extended their interest, you meant that 87 per cent of the bonds had signed these Modified Extension Agreements in the form which we have just introduced in evidence?

A. Yes, sir, I did.

Mr. Clay: In the form of Exhibit No. 122?

The Witness: Yes, sir, the July 25th, agreement.

Mr. Swaine: Mr. Examiner, we do not think it is any real part of the case; and it is only encumbering the record, but we have here the copies of the March 1st, agreement which was superseded by all the other agreements which have been introduced. If anybody wants the March 1st agreement for the purpose of completing the record, we have copies here and they [2363] are free to introduce them.

Examiner Wilkinson: I understand that Colonel Coulson asked that it be put in, and you agreed to put it in.

Mr. Swaine: I am quite willing to put it in.

Mr. Coulson: There are references to that agreement in a number of exhibits introduced, which show the situation in the other agreements of superseded clauses, and I am not sure there is a complete supersedence.

(Testimony of M. J. Curry.)

Q. (By Mr. Swaine) Mr. Curry, are these four sheets the letters sent by the Western Pacific Railroad Company to holders of First Mortgage Bonds, coupon and registered, and the forms of Extension Agreement sent therewith on or about February 26th, 1934?

(Handing papers to witness.)

A. Yes, sir, they are.

Mr. Swaine: I offer those four sheets in evidence to be given one number.

Examiner Wilkinson: The document consisting of four sheets will be received as Exhibit No. 123.

(Exhibit No. 123, by Counsel, was received in evidence.)

Q. (By Mr. Swaine) Mr. Curry, I do not know whether you know the answer to this or not: Was the branch [2364] from Glendale to Bradford Winery in Sacramento County, California, 1.6 miles in length, in existence in 1916?

A. I cannot answer that.

Mr. Clay: Mr. Examiner, may I ask a question at this point?

Examiner Wilkinson: Certainly.

Mr. Clay: Will you rule on these petitions of intervention at this hearing or will they be taken up later?

Examiner Wilkinson: Just as soon as convenient; we will pass on them, just as soon as we finish this.

Mr. Clay: The reason I asked the question is that I have had no advance notice of the presenta-

(Testimony of M. J. Curry.)

tion of these petitions and it may be that I would like to consult the R. F. C. as to what position they would want to take.

Examiner Wilkinson: Off the record.

(Discussion off the record.)

Mr. Swaine: I have no further questions of Mr. Curry.

Examiner Wilkinson: Is there any further questioning of Mr. Curry?

(No response.)

Examiner Wilkinson: You are excused, Mr. Curry.

(Witness excused.) [2365]

Examiner Wilkinson: We will take a five minute recess.

(Thereupon a short recess was taken.)

Examiner Wilkinson: Are you ready to proceed, Mr. Wood?

Mr. Wood: Yes, Mr. Examiner. I will ask Mr. Buckley to take the stand.

Examiner Wilkinson: Mr. Buckley has previously been sworn in this proceeding.

C. E. BUCKLEY

testified further as follows:

Direct Examination

Q. (By Mr. Wood) Mr. Buckley, do the files of the individual trustee under the First Mortgage, kept in the Chase National Bank, contain the cash requisitions under the first mortgage, showing the amounts of cash withdrawn representing first mortgage money in respect of various items of property from the beginning of the mortgage down to the last taking down? A. They do.

Q. You are familiar with those original files? A. I am.

Q. Can you state from your knowledge of those files what requisitions were made with respect to the construction of the Niles-San Jose Branch, giving the [2366] dates of the requisitions and their numbers, the amounts of cash withdrawn, the expenditures made, and the purposes for which the expenditures were made?

A. There were several requisitions aggregating expenditures of \$2,521,229.01 for the construction of the branch line connecting with the main line at Niles, Alameda County, California, and extending to San Jose, Santa Clara County, California.

These requisitions were as follows: —And I will give the requisition number, the date and the amount.

Q. By "amount" you mean the amount of cash withdrawn on the requisition?

A. That is correct.

(Testimony of C. E. Buckley.)

Req.

No.	Date	Amount
67	December 18, 1920	\$166,860.85
78	December 18, 1920	9,336.22
81	December 22, 1920	125,000.00
83	February 2, 1921	100,093.84
109	June 3, 1921	252,656.59
114	June 3, 1921	19,303.69
119	July 1, 1921	116,020.60
121	July 19, 1921	109,151.39
122	Aug. 9, 1921	359,936.08
123	Sept. 6, 1921	263,712.87
		[2367]
125	October 14, 1921	\$128,849.65
126	November 9, 1921	160,501.15
127	December 7, 1921	124,403.47
128	December 29, 1921	90,584.19
130½	June 6, 1922	60,747.81
139	March 2, 1922	69,585.88

Mr. McCollom: We have 99 cents.

The Witness: Pardon me?

Mr. McCollom: Is it 99 or 88?

The Witness: 88.

Req.

No.	Date	Amount
141	April 3, 1922	\$ 57,934.34
143	January 8, 1923	132,028.62
156	July 24, 1923	6,667.89

(Testimony of C. E. Buckley.)

175	May 4, 1925	1,653.33
190	February 12, 1926	128,522.05
212	June 22, 1927	25,955.19

Mr. Wood: I may state at this point, Mr. Examiner, that there are some additional items of expenditure connected with the Niles-San Jose Branch which are not in that list to which Mr. Buckley is now testifying, but which will appear later under a general heading of spurs and tracks and so forth.

Mr. Coulson: May I, for the sake of continuity of [2368] the record, suggest to Mr. Wood that he have his witness show in connection with these branches as to cash requisitions, the amount of money that was requisitioned for right of way and the total cost of the right of way in each case?

Mr. Wood: We can get that from the requisitions, but it will add tremendously to the length of this examination. If Mr. Coulson wishes to ask the question on cross-examination, I think he is entitled to bring it out.

Mr. Coulson: I am in doubt as to the probative force of this testimony, unless it is in some way connected with the total cost of the extension and the cost of land, as distinguished from structures. I do not want to offer any objection to any of this testimony which deals with this conflict of liens question, except on two grounds:

(Testimony of C. E. Buckley.)

One, that is too voluminous, and the other that it is not clear.

I am doubtful whether Mr. Buckley's testimony will be probative unless it is made complete.

Mr. Swaine: If the Examiners please, the First Mortgage permits property to be acquired free of the lien only on certain conditions, one of which is that no proceeds of the First Mortgage Bonds will be used [2369] in connection therewith.

Mr. McCollom: We do not read the mortgage that way.

Mr. Swaine: That is a matter for our briefs.

Mr. McCollom: Yes, sir.

Mr. Swaine: The purpose of this testimony is to show that proceeds from First Mortgage bonds were used in connection with these various properties, and that is all we want to prove. We will brief the legal question later on.

Examiner Wilkinson: Suppose you proceed, Mr. Wood.

Q. (By Mr. Wood) Mr. Buckley, with respect to the Terminotis Branch, what do the Cash Requisitions show as to the cash taken down for that branch?

A. An expenditure aggregating \$586,215.59 for construction of branch line connecting with the main line at a point east of Kingdon, San Joaquin County, California, and extending to the east bank of Little Potato Slough, San Joaquin County, California, consisting of 7.82 miles of main track and

(Testimony of C. E. Buckley.)

3.03 miles of spurs, sidings, etcetera, constituting the Terminous Branch.

The requisitions are as follows:

Req.No.	Date	Amount
224	April 26, 1929	\$561,014.05
234	Sept. 24, 1930	10,546.15

Q. Now, will you please give the same information [2370] regarding the so-called Bidwell Spur?

A. The requisitions were as follows:

Req.No.	Date	Amount
79—		

Mr. Judd: I do not think that the requisitions which you gave on the Terminous Branch add up to the totals which you gave, unless I missed one. I got just two.

Mr. Wood: Mr. Judd, I think the discrepancy, or the so-called discrepancy, is explained this way:

The total figure is the amount of the expenditure. The amounts which Mr. Buckley gave in the individual requisitions represent the amount of cash withdrawn. Where the cash represents the proceeds of sale of bonds—and I may say that these cash requisitions in some cases represent proceeds of bonds and in some cases release money—but where they represent proceeds of bonds and bonds were sold at a discount, the Railroad Company was required to certify expenditures equal to the principal amount of the bonds represented by the cash withdrawal.

(Testimony of C. E. Buckley.)

In other words, if the bonds were sold at 97, expenditures of \$100,000 would have to be certified to withdraw \$97,000 of cash. So that that may account for the discrepancy which seems to appear here. [2371]

Mr. Judd: If it could be stated that it does account for it, it would be satisfactory.

Mr. Wood: These are the figures which show in the requisition as to the expenditures and as to the amounts of cash. That is the only thing which we are putting in, the actual figures which show there. I am giving the explanation to show that it is not necessarily true that the totals represent the same, because in a great many cases the bonds were sold at a discount.

Mr. Judd: Is the discrepancy in each case entirely accounted for by that discount?

Mr. Wood: I think that is true.

Mr. Judd: I think that should be stated so that we can tell whether it is accounted for by that, or in which instance it represents expenditures not made the subject of requisitions.

Mr. Wood: All we can do is to say that this is what the certificate certified were the expenditures and what the amount of cash withdrawn was. I think the facts will have to speak for themselves.

To check back and see what the discounts show, I think would be out of all proportion to the value of the facts which would be brought out.

Mr. McCollom: Off the record just a minute.

(Testimony of C. E. Buckley.).

(Informal discussion off the record.)

Mr. McCollom: Where do you get the total which you give in the beginning of the item?

Mr. Wood: It is the total expenditures on those requisitions. Off the record.

(Discussion off the record.)

Mr. McCollom: I do not understand it yet, and I would like to ask Mr. Buckley one or two questions.

Q. (By Mr. McCollom) In stating the totals at the beginning of each amount upon the particular branches, what are those totals? What are they the totals of?

A. They represent the expenditures stated in the Officer's Certificates of expenditures made.

Q. Then when you state individual items, are those statements of individual items of expenditure, or are they statements of cash drawn down?

A. Those items are the amounts of cash drawn down in connection with that particular branch as embraced in the requisition number so and so.

A. And that explains, does it not, why the total of your individual amounts does not always add up to the original of the complete total which you gave at the beginning of your statement with reference to each item? A. That is correct. [2373]

Q. (By Mr. Wood) I believe you had finished with the Terminus Branch and had started on the Bidwell Spur?

(Testimony of C. E. Buckley.)

A. The following requisitions:

Req.No.	Date	Amount
79	Dec. 18, 1920	\$ 1,752.76

Q. What was the amount of cash withdrawn there? A. Cash withdrawn, \$1,752.76.

Q. I think it might be clearer if in each case you will state the cash withdrawn or expenditures, as the case may be. A. Yes, sir.

Req.No.	Date	Amount
152	Jan. 27, 1923—	

Q. Pardon me, Mr. Buckley, what was the purpose of the expenditure on No. 79?

A. That was Betterments to the main line, consisting of a spur track extending from Bidwell Bar, California.

Req.No.	Date	Amount
152	Jan. 27—	

Mr. Judd: Is that a statement from somebody's requisition or your statement?

The Witness: That is a statement found in the requisition papers.

Mr. Judd: All right. [2374]

Mr. McCollom: Off the record a minute.

(Discussion off the record.)

(Testimony of C. E. Buckley.)

The Witness:

Req.No.	Date	Cash taken down
152	Jan. 27, 1923	\$179,486.87
	Total expenditures (including Req. No. 79)	
	\$181,239.63	
164	Feb. 20, 1924	33,760.37
	Total expenditures (including Req. Nos. 79 and 152)	\$215,000.00
176	May 19, 1925	4,608.78
	Total expenditures \$5,023.84 for interest during construction of Bidwell Spur.	

Q. (By Mr. Wood) In that last item, the total expenditures of 5 thousand and some odd dollars, that is merely the total on the requisition in carrying forward the previous requisitions, is that true?

A. That is correct.

Q. With respect to the Calpine Branch, will you give the same data, Mr. Buckley?

A. Yes, sir.

Req.No.	Date	Cash taken down
140	March 29, 1922	\$397,876.83
	Total expenditures of \$412,876.83 for construction of branch line connecting [2375] with main line at Calpine Junction, Plumas County, California, and extending to Calpine, Sierra County, California. \$15,000 of cash reserved against existing liens was withdrawn against supplemental requisition dat-	

(Testimony of C. E. Buckley.)

ed December 22, 1930, against discharge of liens, making total amount of cash withdrawn \$412,876.83.

Q. May I add to the explanation there with respect to that \$15,000.

Under the First Mortgage, where property was certified, which was subject to prior liens, the Railroad Company was not permitted to withdraw the total amount of the expenditures but was required to reserve or set aside out of the deposited cash an amount equivalent to the principal amount of the liens. Then when the liens were discharged, they were entitled to withdraw the cash which was reserved, and that is what happened here.

Now, with respect to the Reno Branch, will you please give the same data?

A. The following requisitions:

Req.No.	Date	Cash taken down
47	Oct. 4, 1919.....	\$1,152,132.23
Expenditure of \$1,152,132.23 [2376]		
	Purpose: Purchase and acquisition of additional line of railroad connecting with main line at Reno Junction, California, and extending to Reno, Nevada.	
111	June 3, 1921.....	\$240,421.76
Expenditures of \$240,421.76		
174	May 4, 1925.....	\$19,515.33
Total expenditures of \$21,272.84 for acquisition of real property for betterment of		

(Testimony of C. E. Buckley.)

main line, including expenditure of \$102.35 for legal expenses and cost of recording deed in connection with land purchased for betterment of Reno Branch (Purchase price of land certified in Requisition No. 137).

Q. Mr. Buckley, in connection with that last requisition No. 174, the total amount of cash on that requisition was \$19,515.33, and the total expenditures were \$21,272.84. Out of that total expenditure, 102.35 represented expenditures on the Reno Branch. The balance of the expenditures represented items in part on the Reno Branch. Is that true?

A. That is right.

Q. So that you have merely given a total from the requisition and then itemized the part which relates [2377] to the Reno Branch?

A. That is right.

Mr. Wood: In connection with this Branch, there are additional items, which will appear under a different heading, which are not set up at this time. They will all be brought out later.

Q. (By Mr. Wood) Now, with respect to the Loyalton Branch, will you give the same data?

A. The following requisitions:

Req.No.	Date	Amount
35	Feb. 25, 1919	\$137,672.69

Expenditures of \$137,672.69

Purpose: Betterments to main line consisting of construction of industry and spur

(Testimony of C. E. Buckley.)

tracks, including cost of spur track 2.6 miles long to serve Cloyer Valley Lumber Company to 2.20 miles south of Loyalton, California (\$5,350.08).

Q. The last item which you just mentioned of \$5,000 odd, is the only item out of the total of \$137,000 odd which applies to the Loyalton Branch. Is that true? A. That is true.

The other requisitions are: [2378]

Req.No.	Date	Amount
74	Dec. 18, 1920	\$54.70
	Expenditure of \$54.70.	
	Purpose: Betterments to main line consisting of construction of cattle guards on Loyalton Branch.	
187	Nov. 9, 1925	\$33,868.43
	Expenditures of \$36,918.55 for betterments to main line, including track betterments between Hawley and Loyalton \$87.12 (being balance of total expenditure of \$59,764.36 covered in part in Requisitions Nos. 170, 177 and 181).	
216	May 16, 1928	\$100.00
	Expenditures of \$109.00 for betterments, including track betterments between Hawley and Loyalton of \$730.72 (being balance of total expenditure of \$60,495.08 covered in part in Requisitions Nos. 170, 177, 181 and 187).	

(Testimony of C. E. Buckley.)

Mr. Judd: Only the \$87.00 was spent on the Loyalton Branch?

Mr. Wood: That is not true, Mr. Judd.

The Witness: No, not in this case.

Mr. Wood: There was a total expenditure of [2379] \$36,918.55, which was the balance of expenditures certified in another requisition.

Mr. Judd: Did any of that other requisition include expenditures alleged to have been on the Loyalton Branch?

Mr. Wood: Yes, they did.

The Witness: The last requisition is No. 217, date May 16, 1928, amount \$37,934.54.

Expenditures of \$37,934.54 for betterments to main line, including track betterments between Hawley and Loyalton (\$6,528.43, being balance of total expenditure of \$67,023.51 covered in part in Requisitions Nos. 170, 177, 181, 187 and 216).

Mr. Judd: It is not at all clear to me what was spent on the Loyalton Branch.

Mr. Wood: Here we have taken in each case a requisition which included other items and have given the total amount on the requisition and the total expenditures, and we have included the individual amounts which apply to the Loyalton Branch, and some of those are carried forward from previous requisitions, which will be referred to in other parts of this testimony.

(Testimony of C. E. Buckley.)

Examiner Wilkinson: Mr. Wood, would it help, since this witness has these figures in tabular form, they [2380] could be put in in the form of an exhibit rather than through oral testimony?

Mr. Wood: Some of them have been marked up in pencil, and I do not think they are now in shape to put in in that way. I wish we could do it but I do not believe it would be practical to do it.

Examiner Wilkinson: Proceed, then.

Q. (By Mr. Wood) Mr. Buckley, I think that the next heading is called Tooele County Branches.

A. There are a number of requisitions which relate to Branch Lines in Tooele County, Utah, and they give different termini, and we are not sure, without knowing the physical properties, to what extent they are part of one and the same branch, and to what extent they represent different branches, or possibly spurs off of a main branch, so that we have lumped or grouped them under one heading and given the requisitions and the description of the line in each requisition, which I think will be sufficient for the Commission's records.

Q. Will you proceed with what we call the Tooele County Branches, Mr. Buckley?

A. The requisitions are as follows:

Req.No.	Date	Amount
10	Dec. 28, 1917	\$265,156.89

[2381]

Expenditure of \$265,156.89

(Testimony of C. E. Buckley.)

The purpose was contraction of branch line from a point on the main line at or near Grants, Utah, extending to Tooele, Utah.

35 Feb. 25, 1919 \$137,672.69

Expenditures of \$137,672.69

Purpose: Betterments consisting of construction of industry and spur tracks in connection with main line, including cost of construction of spur track to serve Ellerbecks quarries, Tooele County, Utah, \$57,017.44, and cost of construction of Tooele Branch, \$10,403.90 (balance of total expenditure of \$275,560.79 being covered in Requisition No. 10).

Q. Now, with reference to that requisition, Mr. Buckley, is this true: That the total amount of \$137,672.69 is the amount certified in that requisition No. 35, covering various items only part of which related to these Tooele County Branches?

A. That is correct.

Q. And the \$57,017.44 is one item which relates to the construction of a spur track to the quarries and the other item of \$10,403.90 is an item in that requisition relating to the construction of the Tooele [2382] Branch, but that last item is a balance of a total expenditure on the Tooele Branch of \$275,560.79, part of which is covered by Requisition No. 10? A. That is correct.

Q. Will you proceed.

(Testimony of C. E. Buckley.)

A. Requisitions are as follows:

Req.No.	Date	Amount
66	Dec. 29, 1920	\$7,013.71

The purpose was interest during construction of branch line from Grants to Tooele.

Q. Do you have the amount of the expenditure on that?

A. I am quite certain that it is the same, coincidental, but I have not noted it here. That is, it is the same amount but I do not have it down.

Q. In any event, it would be at least that amount of cash? A. Yes, sir.

110	June 3, 1921	\$17,064.54
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Expenditures of \$17,064.54 for construction of branch line connecting with main line at Ellerbeck, Tooele County, Utah, and extending to Flux and Dolomite, Tooele County, Utah.

133	Feb. 10, 1922	\$4,905.53
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Expenditures of \$4,905.53.

Purpose: Construction of branch line connecting [2383] with main line at Bürmester, Tooele County, Utah, and extending to Warner, Tooele County, Utah.

144	Jan. 8, 1923	\$2,938.54
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Expenditures of \$2,938.54

145	Jan. 8, 1923	\$574.29
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Expenditures of \$574.29.

(Testimony of C. E. Buckley.)

Q. (By Mr. Wood) Now, with respect to the so-called North Channel Spur in Stockton, California, will you give us the same data?

A. The requisitions are as follows:

159 July 24, 1923..... Cash \$162,689.96

Expenditures of \$172,414.69 for betterments to main line, consisting of spur track (North Channel Spur) extending from main line north of Stockton yards into the City of Stockton.

174 May 4, 1925..... Cash \$19,515.33

Expenditures of \$21,272.84 for acquisition of real property for betterment of main line, Reno Branch, and North Channel Spur, and improvement of terminal facilities in San Francisco, Stockton and Oroville, includes expenditure of \$2,783.62 for land south of Mormon Channel, Stockton, and \$2,186.25 for purchase of land near Stockton. [2384]

Q. Those last two items were the items which you have picked out of the total of the requisition as applying to the North Channel Spur?

A. That is correct.

Mr. McCollom: Can you tell that they do in fact apply to that spur?

The Witness: I could say that the records, these requisitions, indicate that they do apply to that.

Mr. Wood: I will say this off the record, Mr. McCollom.

(Discussion off the record.)

(Testimony of C. E. Buckley.)

Q. (By Mr. Wood) Next, Mr. Buckley, is the Tesla Branch. Will you give us the same date for that? A. That is as follows:

Req.No.	Date	Amount
1	December 18, 1920	Cash \$39,537.21

Purpose: Betterments to main line.

Includes expenditure of \$58.42 for cattle guards on Tesla Branch.

Q. Next is the line for which we have for convenience called a branch line in San Francisco. I think the description of it, as Mr. Buckley will give it, will sufficiently identify it. There does not seem to be any common name for it.

Will you take that tip? [2385]

A. Requisition is:

Req.No.	Date	Amount
154	July 17, 1923	Cash \$132,298.27

Expenditures of \$132,298.27.

Purpose: Purchase and acquisition of additional line of railroad in City and County of San Francisco connecting with main line, purchased from Ocean Shore Railroad Company.

Q. Now, Mr. Buckley, will you—

Mr. McCollom: Just a minute. Under what heading is that in connection with the General Mortgage?

Mr. Wood: I could not say whether that is described in the General and Refunding Mortgage or not.

(Testimony of C. E. Buckley.)

Mr. Coulson: Off the record.

(Discussion off the record.)

Examiner Boyden: Mr. Wood, in the opinion of the Examiners it is fruitless to sit here and listen to the witness read off the rest of these papers, because we would be here all afternoon. Cannot you submit these papers to other counsel so that they can look them over during the recess and see if there is any matter there which they want to refer to, and set them up in Exhibit form and file them in the record, and save this reading into the record?

Mr. Wood: We can do that, Mr. Examiner. We have [2386] not extra copies to furnish.

Examiner Boyden: Can you furnish extra copies at a later time?

Mr. Wood: If we can have the copies made up, and where we have, as I say, in some cases made pencil corrections, we would have to rewrite the pages. If we will be permitted to file them in corrected form, and send copies to all the parties and the Commission, all right. What I want to do is to get everything in here today.

Examiner Boyden: You can file the copy he has. If they are good enough for him to read from, they are good enough to file in the record.

Mr. Wood: If the Commission will permit us, instead of putting that physically in the record today, to take it back and make the required copies and then file them as exhibits, without coming here,

(Testimony of C. E. Buckley.)

again for that purpose, I think it would be desirable.

Examiner Boyden: It is a matter to be determined by the other parties. Are they going to accept your exhibit without further examination of the witness after inspecting it today?

Mr. Wood: I am prepared to ask Mr. Buckley whether these are accurate summaries of the data contained in the various requisitions which are set [2387] forth here. I think I have already asked him that in substance in the beginning, but to tie it in, I will ask him again.

Q. Mr. Buckley, you have in your hand a memorandum setting forth certain data which respect to these requisitions which you have been looking at in giving your testimony. Are you prepared to state that that memorandum accurately sets forth the data with respect to the cash requisitions that are set forth in the memorandum as shown by the original documents in your files?

A. I am. They are correct.

Q. Can you also state whether your records show that the amounts of cash shown as withdrawn by those requisitions were paid to the Railroad Company?

A. I am.

Q. That is a fact, that they were paid?

A. Our records indicate that they were paid to the Railroad Company.

Mr. Wood: Then, Mr. Examiner, I am prepared to offer this in evidence subject to the conditions which you have just mentioned.

(Testimony of C. E. Buckley.)

Examiner Boyden: You cannot offer it, Mr. Wood, until you can physically present it for the record, but if counsel, after looking at it will agree to [2388] permit you to file it as an Exhibit after the hearing closes, without further examination of the witness, that might be done.

Mr. Wood: That is what I had in mind.

Mr. Swaine: It is right here.

Mr. Coulson: Mr. Examiner, we might want to ask this witness a question now, but that question can be asked now or can be put of record and a check made, and we can proceed that way.

Examiner Boyden: Very well.

Mr. Swaine: The document is here and can be produced and filed today. The only difficulty is that there are some penciled corrections which would have to be made on other copies.

Examiner Boyden: I understood Mr. Wood to say that he needed to have it copied, to make copies of it.

Mr. Wood: We can do it right today with that as the master copy.

Mr. Coulson: Mr. Buckley can do it during the Missouri Pacific arguments this afternoon.

Examiner Boyden: Let us proceed that way, Mr. Wood.

Mr. Coulson: Has that been given an Exhibit Number?

Examiner Wilkinson: We cannot give it an Exhibit Number until it is ready to go into the record.

(Testimony of C. E. Buckley.)

Mr. Coulson: I understand it is ready to go into the record at the moment, and during the recess they are going to get up another copy.

Mr. Wood: Pardon me, Mr. Examiner. In order to clear up a possible ambiguity here as to what these various memoranda are, I would like to ask Mr. Buckley a question.

The memoranda which you have in your hand, as to which I have just asked you these questions, those are memoranda relating to the Niles-San Jose Branch, the Terminous Branch, the Bidwell Spur, the Calpine Branch, the Reno Branch, the Loyalton Branch, the so-called Tooele County Branches, the North Channel Spur, the Tesla Branch, and what we, for convenience, have called the Branch Line in San Francisco, as to which you have given oral testimony, and also the following as to which you have not yet testified:

Acquisition of land consisting of four pages; then a memorandum consisting of nine pages relating to the acquisition of the Sacramento Northern Railroad Company and the Deep Creek Railroad Company; another memorandum consisting of four pages relating to spurs for industrial tracks. That is the heading of it, "Spurs for Industrial Tracks."

Those are the documents to which I am referring [2390] Mr. Buckley, and as to which you state that they are the accurate summaries of what the original requisitions show?

(Testimony of C. E. Buckley.)

The Witness: That is correct.

Mr. Swaine: Would it not be well to fasten all these together as one document?

Examiner Boyden: Just the ones which he has not read.

Mr. Wood: Would you prefer to put in only the ones to which he has not testified?

Examiner Wilkinson: I do not see any necessity to furnish those already in the record, putting them in any more.

Mr. Wood: That is satisfactory.

Then we will eliminate the documentary summary data on the branch lines and will start with Requisition of Land.

That is all we have, Mr. Examiner.

Examiner Wilkinson: Is there any objection to the receipt of this exhibit, No. 124?

Mr. McCollom: Mr. Examiner, may I make this suggestion: We have had no opportunity to see these documents at all. Could the admission of them be withheld until we have had opportunity to look at them during the recess hour?

Examiner Wilkinson: Yes, of course. [2391]

Are there any further questions of Mr. Buckley?

Mr. Coulson: I would like to ask him just two or three short questions, but I think we would rather withhold our questions until this afternoon.

Mr. Swaine: I have one small matter which will take only a few minutes, I think, to complete the record.

(Testimony of C. E. Buckley.)

At one of the previous hearings I requested that Mr. Coulson obtain and furnish for the record the holdings of Arthur Curtiss James, or the A. C. James Company, either directly or indirectly, in the stock of the Western Pacific Railroad Corporation. I believe Mr. Coulson has procured that information, and if he will read it into the record and state it, I will accept his statement.

Mr. Coulson: The request made by Mr. Swaine, as I understand it, was a request for a statement of the stock of the Western Pacific Railway Corporation held by Mr. Arthur Curtiss James or by the Corporation which he controls.

I have prepared a statement showing the stockholdings of Arthur Curtiss James, or there has been prepared by the proper accounting officers, a statement showing the stockholdings of Arthur Curtiss James in the Western Pacific Railroad Corporation, together with the holdings of the Curtiss Southwestern Corporation and the Curtiss Southwestern Company, the first a New York Corporation and the second a Delaware Corporation, showing the stockholdings of those two corporations in the Western Pacific Railroad Corporation. In the case of each of the two corporations Mr. James owns 97½ per cent of the stock of the corporations in question.

The A. C. James Company owns no stock in the Western Pacific Railroad Corporation. I would be glad to offer this statement. I have given Mr.

(Testimony of C. E. Buckley.)

Swaine additional copies which are available here for the record.

Examiner Wilkinson: Have you read all of the information on that statement?

Mr. Coulson: No, I suggest that the statement go in.

Examiner Wilkinson: It will be received as Exhibit No. 125.

(Exhibit No. 125, by Counsel, was received in evidence.)

EXHIBIT NO. 125

Arthur Curtiss James

Curtiss Southwestern Corporation

Curtiss Southwestern Company

Holdings in Western Pacific Railroad Corporation

Preferred and Common Stock as of November 1st, 1936.

Arthur Curtiss James

Western Pacific Railroad Corp. Common Stock
1000 shs.

Western Pacific Railroad Corp. Preferred Stock
1000 shs.

Curtiss Southwestern Corporation

A New York Corporation in which Arthur Curtiss James owns 97½% of the stock, holds:

Western Pacific Railroad Corp. Common Stock,
310,690 shs.

Western Pacific Railroad Corp. Preferred Stock
2000 shs.

(Testimony of C. E. Buckley.)

Curtiss Southwestern Company

A Delaware Corporation, in which Arthur Curtiss James owns 97½% of the stock, holds:

Western Pacific Railroad, Corp. Common Stock 40,700 shs.

Western Pacific Railroad Corp. Preferred Stock 30,400 shs.

[Endorsed]: Finance Docket 10913. Exhibit No. 125. By Counsel. Filed Dec. 9, 1936. Paul P. O'Brien, Clerk.

Examiner Wilkinson: We will recess until two o'clock.

(Thereupon at 12:25 o'clock p. m. a recess was taken until 2:00 o'clock p. m. of the same day.) [2393]

Examiner Wilkinson: Mr. Swaine, are you speaking about briefs when this case is closed?

Mr. Swaine: Yes, sir. As I understand it, this case is closed, except for bringing in some papers which are being prepared, that is, the copy with pencil marks which was brought forward this morning, and that is in turn to be presented. When that is done all parties will be ready to close the case.

I would like to have as early a date as practicable, and I suggest thirty days as the date for filing briefs on the three plans.

Mr. Campbell: Mr. Examiner, Mr. Nicodemus asked me to read in his behalf a brief statement,

which will take just a minute, at the conclusion of this hearing. If I have your permission, I should like to read it.

Mr. Swaine asked that at the conclusion of the hearing other counsel be requested to advise of any changes that may be suggested in briefs respecting any of the three plans. We waive the question which naturally arises as to the procedure of one counsel out of so many insisting upon having the last word, and submit the following statement:

"In view of Mr. Swaine's complete repudiation of the Debtor's plan, which the record shows to [2438] be a compromise plan proposed by Mr. Swaine's clients and accepted by the Debtor as the best plan that could then be negotiated, we think it proper to point out to the Commission the particulars in which the plan is burdensome to the Debtor.

"If the Commission shall undertake to modify the plan in the interest of substantial justice and to comply with the spirit of Section 77, we suggest that it consider the following:

"(a) A small sinking fund for the new 4 per cent bonds."

Examiner Wilkinson: You are referring now to the Debtor's plan?

Mr. Campbell: I am referring now to the Debtor's plan.

"(b) A reduction of the interest rate on the Series A Income Bonds from 5½% per cent to 4 per cent.

—“(c) A reduction in the interest rate on the Series B Income Bonds from 5½% to 4 per cent.

“(d) A reduction in the interest rate on the Junior Lien Income Bonds from 5½% per cent to 4 per cent. [2439]

“We also suggest that the Commission consider the elimination of the Voting Trust as an effort on the part of the minority to secure control of the Debtor.”

These suggestions are not made as modifications of the Debtor's plan. We stand upon the plan as filed and merely submit the above suggestions to indicate to Mr. Swaine the line of argument that we feel free to submit in our brief.

We may, however, on further reflection, think of other suggestions, and, if so, we shall feel free to place them in our brief.

On the point as to the time for filing briefs Mr. Nicodemus asked me to suggest two months.

Examiner Wilkinson: Just before we come to the date for filing briefs, so that we will have the record clear, the Debtor is not now proposing amendments to its plan?

Mr. Campbell: Not as modifications. They are not proposed as modifications.

Examiner Wilkinson: They are here intimating that they might, if they see fit, make these proposals in their brief?

Mr. Campbell: He says, "We think it proper to point out to the Commission the particulars in which [2440] the plan is burdensome to the Debtor, and if the Commission shall undertake to modify the plan in the interest of substantial justice"—if the Commission shall undertake to modify the plan—"and comply with the spirit of Section 77, we suggest that it consider the following."

It is a mere suggestion.

Examiner Wilkinson: I wanted to make the record clear.

Mr. Campbell: Mr. Examiner, Mr. Nicodemus also asked me at the conclusion of the case to renew in form a motion which he made at one of the earlier hearings, to strike out certain evidence, certain exhibits, and with your permission, since it is just a brief motion, I should like to renew it, the purpose being to lay the ground work for a renewal of such motion upon hearing before Division IV or the Commission.

This is the motion, on which we do not ask any ruling—

Examiner Boyden: Wait a minute.

Mr. Campbell: I beg your pardon.

Examiner Boyden: Do I understand you to say that a motion to strike is going to be argued before Division IV? [2441]

Mr. Campbell: To lay the groundwork for a submission before Division IV. It is his understanding that it will be open for a renewal, because I think this was designed to eliminate burden-

some, extraneous exhibits which are not necessary for consideration and make the record exceedingly cumbersome.

I do not ask any ruling here, but it is to lay the groundwork for renewing it again.

The motion which he wishes me to make is, to strike out the following Exhibits:

That the Examiner strike out the following Exhibits, on the ground that they are incompetent, immaterial and irrelevant.

All of the Exhibits numbered from 45 to 104, except the following Exhibits Numbers 51, 52, 53, 60, 61, to 74, 75, 76, 77, 78, 79, 80, 81, 82, 95, 96, 97, 98, 99, 100, 102 and 103.

In addition we move to strike out all parts of Exhibits Numbers 63 to 73, inclusive, except in each case the certificate of expenditures which is a separate detachable document.

Examiner Wilkinson: While you are on that subject, do you not want to include Exhibit Numbers 107 to 125?

Mr. Campbell: I should think that we should like [2442] to suggest the same treatment with respect to all of those where there is a detachable, separate exhibit of a certificate of expenditure, but that was not framed at the time when I discussed this with him.

Examiner Wilkinson: We have not yet quite completed the testimony along this line. We might as well dispose of that question now.

Mr. Coulson, have you an objection along this line? Do you still move to strike out those exhibits?

Mr. Coulson: I will not joint at this time in the motion, because I think, as the Examiner stated this morning, there is so much testimony in this record in bulk that any blanket motion to strike out arouses some concern in my mind that it might be something essential to Mr. Swaine in carrying his burden of proof under his first mortgage, and I have no desire to embarrass any party to this proceeding.

Mr. Swaine: I appreciate that.

Examiner Wilkinson: Do any of the other parties to this proceeding desire to move to strike out any of this evidence which has been received heretofore, subject to the motion to strike?

(No response.)

Examiner Wilkinson: The Debtor's motion is overruled. The Exhibits are received. [2443]

Now we might as well dispose of Exhibit No. 105, which is a corporate history of the debtor, which was marked for identification only this morning.

Have parties had a chance to read it over, and is there any objection to Exhibit No. 105?

Mr. Coulson: I would like to make a suggestion as to that. It seems to me that the corporate history which is produced for identification as Exhibit No. 105 purports to be no more than a summary of factual data already before the Commission.

I think we can allow it to go into the record here, if there is a distinct understanding that it is only such a summary, and subject to correction either as to direct statement of fact or implication, by reference to the testimony, the evidence, that has been put before this Commission by various witnesses subjected to cross examination.

I think, however, that in doing that there are a few verbal changes that might well be made by the parties here before it is accepted by the Commission, and accepted with those verbal changes, so as to avoid subsequent misunderstanding.

I call your attention to the bottom of page 19, the beginning of the next line to the bottom, beginning with the word, "constituting," and running through the [2444] word "mortgage" on the last line of the page.

I suggest that that phrase be stricken out as unnecessary, since the mortgages, plus the voluminous testimony which Mr. Swaine has introduced, speak for themselves, and this conclusion might be misunderstood if allowed to stand uncorrected.

Mr. Swaine: Before you leave that, if you will just look over on page 20, I think you will see that the statement is rather innocuous. It says:

"*** then owned by the railroad company which was subject to the first mortgage."

Mr. Coulson: I grant it is innocuous, but I would like to render it unambiguous as well.

Examiner Wilkinson: This statement was prepared by the Debtor. Does the debtor agree to the

deletion of the words suggested by Colonel Coulson?

Mr. Campbell: I am disposed to agree with that. Mr. Nicodemus' statement was offered, subject to correction, and it is merely factual data, and no legal conclusions.

Examiner Wilkinson: The Exhibit is received subject to the deletion of the language suggested by Colonel Coulson.

Mr. Swaine: If you delete that, you must delete all the rest of the sentence. [2445]

Mr. Coulson: I will frame a sentence which will perhaps meet what Mr. Swaine has in mind. On the next page a similar conclusion is stated as to the general and refunding mortgage by the use of the words in the second line of that page,

"* * * and constituting a first lien."

I suggest that we strike out the words "and constituting a first lien" and substituting therefor "was expressly a first lien."

Mr. Swaine: I think if you strike out anything you should strike out everything except that there was created a first and refunding mortgage on the date, and let it speak for itself, and do not characterize it.

Examiner Wilkinson: I think it is better to receive this exhibit with the understanding that the statements in the exhibit by the Debtor are not binding upon the parties to this proceeding, other than the Debtor, and that these statements be subject, as Colonel Coulson stated, to verification and

check by the evidence which has already been put in in this case.

Mr. Coulson: With all deference to the Examiner, I think we want something more than not binding, we want something which is not confusing. This statement serves only the purpose of being a convenience [2446] to the Examiner, and is not binding.

Examiner Wilkinson: Just as background.

Mr. Coulson: I think it is quite unsound, despite the desire of all of us to dispose of this case. With petitions of intervention and what not before the Commission, it may be six months before the Commission writes a final decision, and I think if this statement is to serve its purpose it should be put in unambiguous and non-confusing phraseology at this time and I think there is so little in it which is non-confusing that we ought to be able to do it.

Examiner Wilkinson: Off the record.

(Discussion off the record.)

Mr. Coulson: As suggested by Mr. Swaine, strike out on page 19 of Exhibit No. 105 for identification the last two lines on page 19 and the first five and one-half lines on page 20.

On page 22, the next to the last line of the paragraph which finishes at the top of that page, the line which begins "bonds of the railroad company," insert after the word "company" the phrase, "as additional collateral for a debt of the railroad company."

On page 23 at the end of the paragraph which ends at the top of that page, insert the paragraph:

"The railroad company is still indebted to [2447] A. C. James Company to the full amount of its original advances of \$4,999,800, and has not made any payment of interest thereon since February, 1934."

Examiner Wilkinson: It is agreed and stipulated by all the parties to the proceeding that the changes stated by Colonel Coulson may be made in Exhibit Number 105, is it?

Mr. Campbell: No objection.

Examiner Wilkinson: Exhibit No. 105 is received.

(Exhibit No. 105, by Counsel, was received in evidence.)

Examiner Wilkinson: Now, Exhibit No. 106 was received for identification.

Mr. Coulson: I would like to make a comment as to that, if I may, Mr. Examiner.

Examiner Wilkinson: Yes, sir.

Mr. Coulson: This is headed, I think, in a misleading way. It starts out, "Statement of Loans from Reconstruction Finance Corporation, Railroad Credit Corporation and A. C. James * * *."

It goes on with further data. It is of course not a statement of loans, but rather a statement of the dates when certain general and refunding bonds were issued and delivered. This is not only incomplete, but it is merely [2448] a summation of data that is already in its complete form in the record, and I think it is in this form misleading and will be misunderstood at a later time when our memory of these things is cold, if we allow it to go in.

I suggest that if there is any necessity for a convenient summation of this sort, that there be a mere statement of the dates when these various general and refunding mortgage bonds were issued, and to whom, and for what purpose.

Mr. Judd: That can easily be read into this statement.

Mr. Campbell: Colonel Coulson, in introducing that exhibit and statement prepared by Mr. M. J. Curry, showing the delivery dates to pledgees of \$18,995,500 principal amount of general and refunding bonds, the information was given.

Mr. Coulson: But it completely lacks clarity under its present title, and I think is bound to confuse us later. We have already got the data in the Exhibit already put in as Number 105, I think, and in numerous other statements in this proceeding.

Mr. Swaine: No. 105 does not give the dates of delivery.

Mr. Clay: I would like to ask, Mr. Examiner, if [2449] this is to have the same status as Exhibit No. 105, and does not bind the collaterals. The collateral which the R. F. C. holds was delivered contemporaneously with the making of the loans. I do not know whether the dates shown in this Exhibit are dates which coincide with the making of the loans, but I do know that the collateral was delivered at the time of the making of our loans.

Mr. Coulson: I suggest that Mr. Curry might just read into the record the amounts and dates of the delivery, and not have this confusion in the record,

because there are other collaterals here and there are lots of questions which it raises.

Examiner Wilkinson: If it will only take a moment to do it, all right.

Mr. Coulson: It would only take a moment to read in the dates of delivery, I think, Mr. Examiner.

Mr. Curry: Dates of delivery of general and refunding mortgage bonds, 5 per cent, Series A and B as part collateral:

The Reconstruction Finance Corporation—

Mr. Coulson: Put in the dates first, Mr. Curry, so that we will be clear, because that is what we are interested in, the date of each delivery, to whom it went, and the amount. [2450].

Mr. Curry: \$8,750,000 principal amount, delivered on March 1, 1932.

\$2,000,000 principal amount; delivered March 25, 1933.

To the Railroad Credit Corporation, \$2,000,000 delivered March 25, 1933; \$2,000,000 principal amount, Series B, delivered March 25th, 1933 by A. C. James Company.

To A. C. James Company: \$5,630,000 delivered March 1, 1932; \$2,000,000 of such bonds repledged with the Railroad Credit Corporation, delivery of said \$2,000,000—

Mr. Coulson: For a debt of the Debtor Company?

Mr. Curry: For a debt of the Railroad Company, delivery of said \$2,000,000 being made on March 25, 1933 by A. C. James Company.

\$433,500 delivered to A. C. James Company,
March 28th, 1932.

\$186,000 delivered to A. C. James Company, May
31st, 1932.

Mr. Willard: There again, Mr. Examiner, I assume that the evidence already in would control, in the event of any difference.

Examiner Wilkinson: That is correct.

Mr. Coulson: It is merely a convenient summary of [2451] the dates.

Examiner Wilkinson: In view of the fact that Mr. Curry has read the first parts of this exhibit, and in view of the objections, Exhibit No. 106 will not be received.

C. E. BUCKLEY

testified further as follows:

Direct Examination

(Continued).

Mr. Wood: Mr. Examiner, in offering this document as an Exhibit—I think the identification of it is already in the record—I want to make an explanation which will perhaps clarify the portions which are headed respectively "Acquisition of Sacramento Northern Railway and Spurs and Industrial Tracks."

The memorandum gives in each case the total amount of cash withdrawn on a particular requisition. In a great many cases the expenditures covered a great variety of items, and the amount of

(Testimony of C. E. Buckley.)

cash will be entirely disproportionate to the amount of expenditures that are set forth in the memorandum. The reason for that is this:

Say we had one million dollars of cash withdrawn for all sorts of Additions and Betterments, for [2452] the particular purpose which is set forth in the memorandum as construction of spur and other tracks.

We have picked out merely the amount of expenditures that relate to that particular class of property, namely, spurs and industrial tracks. We have not given the aggregate of expenditures in the whole requisition, although we have given the whole amount of cash. So that you will have one million dollars cash withdrawn and maybe \$25,000 as the item of property expended.

With that explanation, I think the memorandum will be a little clearer.

I offer that as an Exhibit.

Examiner Wilkinson: As you will recall, Mr. Wood, it has already been put in the record as Exhibit No. 124.

Mr. Wood: I thought it was for identification only.

Examiner Wilkinson: Exhibit No. 124 will be received.

(Exhibit No. 124, Witness Buckley, was received in evidence.)

Mr. Wood: I will have this rewritten with the changes here in pencil on the document which is

(Testimony of C. E. Buckley.)

now going into the record, and I will distribute copies [2453] to the parties. The Commission would like to have two more, I understand.

Examiner Wilkinson: Very well.

Mr. Swaine: I would like to address to the Examiners a question of personal privilege. I have not had a holiday for two years.

Mr. Coulson: Just a moment. Do you anticipate the cross examination of Mr. Buckley?

Mr. Swaine: No. I thought you were through.

Mr. Judd: I have a couple of questions.

Cross Examination

Q. (By Mr. Judd) Mr. Buckley, with respect to the branches, spurs and other items covered by your testimony and this Exhibit No. 124, are we to understand that you have extracted and summarized everything on those subjects which is contained in requisitions for cash drawn down under the first mortgage?

A. I cannot say that we took every item in those requisitions that referred to the heading of the various loans, and inserted them here.

Q. You can say?

A. I cannot say that we extracted every one. All I can say is that the facts contained in the memoranda are contained in the appropriate requisitions on file with the individual trustee. [2454]

Q. With respect to the individual branches about which you have testified, have you any knowledge of

(Testimony of C. E. Buckley.)

the total amount of money that was spent by the railroad company for right of way on any particular branch?

A. I have not.

Mr. Wood: That would appear in the requisitions but it would take a great deal of time to dig it out in each individual case.

Mr. Judd: Would that show, if I may ask you, Mr. Wood, the total amount spent by the railroad company or the total amount cited in the requisitions?

Mr. Wood: The requisitions are certifications of what they have expended, on the basis of which they are withdrawing cash.

Mr. Judd: Are they a certification that nothing will be expended beyond that?

Mr. Wood: No, they show expenditures between certain dates.

Mr. Judd: In connection with the branch from Hawley to Loyalton, may I see the memorandum from which you were testifying concerning the first item of expenditure?

Mr. Wood: At that point I may say this: That the position of the first mortgage trustee is that under the after acquired property clause of the first [2455] mortgage, we take the position that if any first mortgage money went into a branch or extension, that branch in its entirety is subject to the first mortgage.

Mr. McCollom: Of course, we do not agree with that view.

(Testimony of C. E. Buckley.)

Mr. Swaine: That is a matter for briefing.

Mr. Coulson: When they put in testimony as to minor expenditures on a branch this morning, that was brought up, but they show the right of way of a part of the branch of the California extension being shown acquired with mortgage money, and do not show with what money the rest of it was acquired.

Examiner Wilkinson: Proceed.

Q. (By Mr. Judd) Mr. Buckley, am I correct in understanding with respect to requisition No. 35, that the expenditures therein on what you call the Loyalton Branch were made simply for what is termed a spur track, running south from Loyalton?

A. All I can tell you, Mr. Judd, is this: That the papers in requisition 35 will indicate that these expenditures were for the betterment to the main line, consisting of the construction of a spur track, including the cost of the spur track 2.6 miles long, to serve this lumber company to 2.20 miles south of [2456] Loyalton, California.

There is evidence in the 35 papers that indicate that.

Q. And that is the only part of requisition No. 35 which went into what you term the Loyalton Branch?

A. I cannot say that there are not some others, without looking at it, but I know that this particular information did appear on No. 35.

Q. I simply want to bring out that there is nothing in this, as it stands on the record now, to

(Testimony of C. E. Buckley.)

contradict the statement in Exhibit No. 29 that the branch from Hawley to Loyalton was acquired with free funds, and that the treasury was reimbursed for that expenditure on scrapping a part of the branch.

A. I have no knowledge of that.

Mr. Wood: I do not think that that is quite correct, Mr. Judd, because this item does not stand alone here. You have on Number 35 an item of \$5,350.08, for one particular purpose, cost of a spur.

Mr. Judd: Yes.

Mr. Wood: Yet the total requisition is 137 some odd thousand dollars.

Coming to that 137 some odd thousand dollars you have an expenditure in the balance of 59 thousand and some odd dollars for betterments to the main line, [2457] including track betterments between Hawley and Loyalton.

Mr. Judd: On that there is only \$87.00 as I read this memorandum, which is on track betterments between Hawley and Loyalton.

Mr. Wood: That is the balance which was used under this requisition, but the reference is made to previous requisitions numbers 170, 177 and 181, and the balance is given as \$59,764.36.

Mr. Judd: Would you say, Mr. Wood, that that \$59,000 purports to represent expenditures on the Loyalton Branch?

Mr. Wood: Exactly, it does. In your next requisition No. 216, you have some more of the track betterments between Hawley and Loyalton.

(Testimony of C. E. Buckley.)

Mr. Judd: Let me see requisition No. 170. I am not going into all of them, but I would like to see if it goes to that amount.

Examiner Boyden: Are you talking about papers in the record or not in the record?

Mr. Judd: I think, as a matter of cross examination of Mr. Buckley, we are entitled to look, within reason, at the papers on which his testimony was based.

Examiner Boyden: Off the record. [2458]

(Informal discussion off the record.)

Mr. McCollom: Mr. Examiner, the requisitions are here, if the Commission feels that they ought to be used, but there were taken from these requisitions, and Mr. Buckley has testified that the data set forth is accurate. Mr. Judd of course, is entitled to ask any questions he wants about them.

Mr. Coulson: I am frank to say that I understood Mr. Buckley's testimony this morning as to the total item mentioned by Mr. Wood as being a total which included items for other purposes, and that the specific item applying to the extension here was the smaller figure here.

Mr. Wood: That is true in part.

Mr. Judd: It is my purpose to see that—

Mr. Coulson: The record showed it this morning.

Mr. Wood: I think that needs explanation. I have a large requisition which includes all sorts of items. In that you will find one item which says \$87.12, the amount being shown on this particular requisition.

(Testimony of C. E. Buckley.)

tion, but then there will be a little parenthesis following that; that will say, "being the balance of total expenditures of so much," or it will say, "After deducting amounts covered by requisition No." then giving the number, and say "balance so much." [2459]

In other words, they are carry-overs from previous requisitions, with a total amount, deducting the previous requisitions, leaving a balance which is used on that particular requisition. They refer back, and the total is what is given here.

Mr. Judd: I should think I might look at the one requisition to which I referred, and so far as I am concerned, I have no objection, Mr. Buckley has them in his bag.

(Informal discussion off the record.)

Q. (By Mr. Judd) You do not know, do you, Mr. Buckley, as to whether or not your statement on the acquisition of land covers all the land which has been acquired by the Western Pacific Railroad Company since 1916? A. I do not, no.

Q. You do not know, for instance, with respect to the item of miscellaneous physical property, listed on Exhibit No. 115, I believe it is, warehouse building at Grass and Terminous, acquired in October, 1930 for \$35,616, whether that was acquired out of first mortgage money or free funds?

A. I do not know. It may be possible to pick it up by the deductions, but I have no knowledge at the moment. [2460]

(Testimony of C. E. Buckley.)

Mr. Wood: Which item, Mr. Judd.

Mr. Judd: Line 46 on No. 212, being Exhibit No. 113.

Mr. Wood: How does it read?

Mr. Judd: It reads "warehouse building, pump house, pumps, etcetera, Grass and Terminous, California."

Mr. Wood: I do not know any way of tying those up except by comparing the deductions, the amounts, the dates, and taking the requisition, which would necessarily tie it up with that. You would have to go into the railroad company's own records, I suppose, to get the proper tie up.

Mr. Judd: Is the same true as to the spurs, that there has been no comparison made on the industrial spurs and other tracks built by the railroad since 1916 to see whether or not such construction was financed with first mortgage funds?

The Witness: I have made no such comparison.

Mr. Wood: All we have done is to take the requisitions and summaries, what appears in the papers. That is the extent of our examination of this data.

Mr. Judd: I see. If the expenditures listed as \$31,000 capital account for construction of tracks to serve the industrial section in San Francisco are [2461], stated in Exhibit No. 31 as uncapitalized, there is nothing in this which in and of itself connects with that or contradicts it?

Mr. Wood: All I say is that we looked at nothing but the requisitions. If there is an obvious tie up

(Testimony of C. E. Buckley.)

between a requisition and that, it speaks for itself. There is no attempt to reconcile the requisition with any data or material.

Mr. Judd: That is for us to dig out later on in brief?

Mr. Wood: If you like.

Q. (By Mr. Judd) Have you made demands on the Chase Bank, Mr. Buckley, on behalf of the general mortgage for payment of interest or dividends upon the collateral held by the Chase Bank as trustee under the general mortgage?

A. Notes or bonds held by us as collateral?

Q. Yes.

A. We have served some notice on obligors, on notes held as collateral. Whether or not that is a demand for payment of interest or a notice that if any interest is paid, it is payable to us as trustee, I cannot recollect the facts.

Q. Do you remember approximately the date when that was done? [2462]

A. My best recollection is that it was shortly after the company went into 77, but I would have to verify that from the record. It is easy to ascertain all of this.

Mr. Judd: Mr. Examiner, I would like to have permission to read for the record a telegram which was just received this morning transmitting information from San Francisco with respect to the payments of interest on the note of Tidewater Southern Railway Company and pledged under the

(Testimony of C. E. Buckley.)
general mortgage, since the date when the general mortgage went into default, to wit, March 1, 1934.

Examiner Wilkinson: Who is the telegram from?
Mr. Judd: The telegram is from our San Francisco Counsel and it reads:

"Western Pacific Reports—meaning the San Francisco office of the Western Pacific and skipping some irrelevant matter—"The Western Pacific Railroad Company has been the only recipient of interest payments since March 1, 1934 on Tidewater Southern Notes for \$508,000, pledged under General and Refunding Mortgage, such payments being as follows:

"Interest period September 1, 1933 to February 28th, 1934, \$12,706.97. Date paid [2463] March 2, 1934 STOP Interest period March 1, 1934 to August 31, 1934, \$12,706.97. Date Paid September 17, 1934 STOP Interest period September 1, 1934 to February 28, 1935, \$12,706.97. Date Paid March 6, 1935 STOP Interest period March 1, 1935 to August 31, 1935 \$12,706.97. Date Paid September 6, 1935 STOP Total \$50,827.88.

(Signed)

FELIX T. SMITH,
our San Francisco Counsel.

I would like to offer for the record a copy of the note of the Tidewater Southern Railway Company.

Can you identify that, Mr. Buckley, as a copy of a note in your possession, as trustee, under the General Mortgage?

(Handing papers to witness.)

(Testimony of C. E. Buckley.)

Examiner Boyden: Don't we have copies of all those noted in the record?

Mr. Judd: I believe some particulars of those are in, but in view of the fact that interest has been paid on this note without being paid to the trustee under the General Mortgage, I think it is desirable to have the full provision, the entire notes, in the record. [2464]

Mr. Swaine: So that there will be no misunderstanding, we do not concede that the general and refunding is a first lien on that note.

Examiner Wilkinson: Can you identify that?

The Witness: No, I cannot identify that. I would have to see the original note and see that that is a photostat. I do not carry the figures in my mind.

Mr. Coulson: Can it not be received subject to inspection?

The Witness: I would be glad to.

Mr. Judd: If, after the hearing, I submit to you the letter which you sent over and from which the photostats were made, will you be satisfied that this is a correct copy?

The Witness: I do not know whether this is a photostat of what was sent or not. I suppose it is, but I would have to see the original document.

Examiner Wilkinson: Suppose you offer it, Mr. Judd.

Mr. Judd: I will offer it in evidence, subject to correction.

Mr. Swaine: No objection.

(Testimony of C. E. Buckley.)

Examiner Wilkinson: It will be received as Exhibit No. 126. [2465]

(Exhibit No. 126, by Counsel, was received in evidence.)

Examiner Wilkinson: Have you got copies?

Mr. Judd: Yes, sir.

Examiner Wilkinson: That is all, Mr. Buckley.

Mr. Coulson: May I ask just one question?

The Witness: Yes, sir.

Q. (By Mr. Coulson) Mr. Buckley, I refer to the various branch lines as to which you testified today and the total items of real property itemized in Exhibit No. 124, which has been put in the record in connection with your testimony today, and ask you whether there has been executed and delivered by the debtor company to the first mortgage trustee any supplemental indentures which refer to these various branch lines and other properties?

A. I do not recall.

Q. But you would recall if one had been executed, if you had been connected with the carrier?

Mr. Wood: We will concede there were none. I think that is the fact.

Mr. Coulson: Thank you.

Mr. Clay: Does that mean that there has been no supplemental indentures since the date of the first mortgage in 1916? [2466]

Mr. Swaine: I am so advised by counsel for the trustee.

Mr. Wood: I have worked with the Western Pa-

(Testimony of C. E. Buckley.)

eific for years a great deal and I have never heard of a supplement, but I do not know.

Mr. Swaine: We are perfectly willing to have this case adjudicated on the assumption that there are not any.

Examiner Wilkinson: Any further questions of Mr. Buckley?

(No response.)

(Informal discussion off the record.)

Mr. Wood: Mr. Examiner, if we are through with the disueussion about briefs—

Examiner Wilkinson: That was off the record. Do you haye anything further of Mr. Buckley?

Mr. Judd: No, sir.

Examiner Wilkinson: Does any other party have any question of Mr. Buckley?

(No response.)

Examiner Wilkinson: You are excused.

(Witness excused.)

Mr. Wood: In connection with the statement Mr. Swaine made about there being no supplements, I think [2467] for the purpose of making the record clear—and this is not for the purpose of committing anybody to a legal conclusion—I think it ought to be pointed out that in the case of each one of these requisitions involving acquisition of property, purchases of land, or branch

lines, there was an opinion of the railroad company's counsel furnished to the trustees as part of the requisition, to the effect that no supplemental indenture was necessary to subject particular property to the lien of the first mortgage, subject to no prior liens, and that is provided in the opinion.

Mr. Clay: Mr. Examiner, that opinion of course, is merely an opinion, and it cannot bind the creditors in this proceeding. I should further like to point out that part of this property is in Utah, and part of the property is in Nevada and part of the property is in California, and it is possible that in one of those states no supplemental mortgage is required. It is quite possible that if the property were located in one or the other states, under the law of that state a supplemental mortgage would be required.

Mr. Wood: Mr. Examiner, I tried to make that clear in the preliminary statement which I made; that we are not putting this in for the purpose of a legal conclusion, but it is merely a statement of facts, to [2468] make the matter clear, I assume that when counsel gives an opinion he has considered the law of a particular state with which he is dealing.

Mr. Coulson: I do not think we can make that a matter of evidence.

Examiner Wilkinson: It is not evidence, and it is not to be relied upon in this proceeding. There is no use of encumbering the record by talking about it.

Mr. Swaine: Wait a minute. It does have an evidentiary value.

Examiner Wilkinson: Has the opinion been put in the record?

Mr. Swaine: No.

Examiner Wilkinson: Are you going to put it in?

Mr. Wood: That is the reason I am making reference to it. Not unless the Commission wants it put in.

Examiner Wilkinson: I am not telling you what to put in. As I said, it would be an admission on the part of the Debtor, but unless you have got it to put in, there is no use in talking about it.

Mr. Swaine: Let us meet it when it comes up. Mr. Coulson asked the question as to whether there was taken by the trustee a supplemental indenture. I concede, so far as my bonds are concerned, that no [2469] supplemental indenture was taken.

At the same time I think it is fair to have pointed out that the debtor represented to the trustee on each one of these take-downs, by filing an opinion of counsel, that no supplemental indenture was necessary.

Now that is the fact, and Mr. Coulson knows that it is a fact, and Mr. Buckley can testify to it, or if it becomes relevant we can dig out of the take-down proceedings every opinion on every case. I quite agree with Mr. Clay that that does not bind Mr. Clay to it, but it does show what the intent as between the debtor and the first mortgage

bondholders was, and I think it is a relevant fact.

Examiner Wilkinson: The only thing which I am saying, Mr. Swaine, is that it may be—and I would admit it, if you have it—but I cannot consider as evidence some statement like that.

Mr. Coulson: Mr. Examiner, I would like to say quite clearly—it seems to me we are wasting time on something which is necessarily irrelevant—that the opinions of counsel, even if they were offered and identified as competent counsel, competent to give testimony as to the law of these various states, it [2470] cannot ever be considered evidence here, and as an admission it might have some embarrassment to the debtor, but this question of liens is something in which the debtor company has no personal interest. It is purely a question between the first mortgage bondholders, the junior creditors, and the general creditors of this property, and no one of them can be bound by any opinion that any counsel gave the trustee or the debtor company.

Examiner Wilkinson: I think we have had sufficient on the record in that regard. Proceed please.

Mr. Wood: Mr. Buckley can testify. Will you take the stand, Mr. Buckley?

Mr. Clay: May I suggest that so far as I am concerned, that I am willing to admit that such an opinion was given, but I do not see how the opinion can be binding upon the parties.

Mr. Swaine: I agree with that. It does not bind you.

Examiner Wilkinson: I believe that is sufficient on the record on that.

If you have something else, all right.

Mr. Wood: I would like to have Mr. Buckley testify to the fact that the opinion was given in each case. [2471]

Examiner Wilkinson: All right.

Mr. Wood: Mr. Buckley, in the case of each of these requisitions as to which you have testified, and which was mentioned in the memorandum which went into evidence as Exhibit No. 124, I think it was found from your examination of those requisitions that in each case there was an opinion of counsel as part of the requisition, to the effect that no supplemental indentures or other instrument was necessary to subject the property described in the requisition to the lien of the first mortgage as a first lien, with the exception of any prior lien specifically mentioned in the opinion.

I think in a few cases there were, or in the case of one there was \$15,000 reserved, but unless specifically mentioned, there were no prior liens.

Mr. Coulson: I object to the form of the question, as he has not specified what property he has referred to.

Examiner Wilkinson: The objection is overruled. Will you answer the question if you can?

Mr. Buckley: We have received such an opinion.

Examiner Wilkinson: Is there anything further of Mr. Buckley?

(No response.) [2472]

Examiner Wilkinson: Have any parties anything further to offer in this case?

(No response.)

Examiner Wilkinson: The case will be closed, and briefs will be filed on January 11th, 1937, and of course the record speaks for itself with respect to the motions, or rather the petitions of intervention.

(Thereupon at 4:10 o'clock p. m., the hearing in the above entitled matter was closed.)

[Endorsed]: Filed Oct. 3, 1939. [2473]

**CERTIFICATE OF CLERK TO TRANSCRIPT
OF RECORD ON APPEAL.**

District Court of the United States, Northern District of California, Southern Division.

I, Walter B. Maling, Clerk of the United States District Court, for the Northern District of California, Southern Division, do hereby certify that the foregoing pages, numbered from 1 to 2769, inclusive, contain a full, true and correct transcript of so much of the records and proceedings in the Matter of The Western Pacific Railroad Company, Debtor, No. 26591-S, as are included in the Designations of the portions of the record to be contained in the Record on Appeal in said proceeding, filed by the parties to said proceeding in said Court in accordance with Rule 75 of the Rules of Civil Procedure for the District Courts of the United States, and consisting of (a) "Designation

by Appellants, The Western Pacific Railroad Company, The Western Pacific Railroad Corporation, A. C. James Co., The Railroad Credit Corporation, and Irving Trust Company as Trustee under the General and Refunding Mortgage of Western Pacific Railroad Company dated January 1, 1932, of the Portions of the Record, Proceedings and Evidence to be Contained in the Record on Appeal," filed October 10, 1940 (supra pp. 1257 to 1265); (b) "Designation by Appellees, Frederick H. Eeker, John W. Stedman and Reeve Schley, as a Committee for a Group of Institutional Holders of First Mortgage Bonds of the Western Pacific Railroad Company, and Crocker First National Bank of San Francisco and Samuel Armstrong, as Trustees [2770] under the First Mortgage Filed June 26, 1916, of The Western Pacific Railroad Company, of Additional Portions of the Record, Proceedings, and Evidence to be Included in the Record on Appeal", filed October 21, 1940, (supra pp. 1650 to 1654), and (c) "Designation by Appellee, Reconstruction Finance Corporation, of Additional Portions of the Record, Proceedings and Evidence to be Contained in the Record on Appeal", filed October 19, 1940, (supra pp. 1746 to 1747), as the same now remains on file and of record in my office, except (1) the original Exhibits which in accordance with Rule 75(i) of said Rules of Civil Procedure for the District Courts of the United States and the order of said Court made, filed and entered November 27, 1940 (supra pp. 1754 to

1755), have been transmitted to the Clerk of the Circuit Court of Appeals for the Ninth Circuit and are a part of the transcript of record on appeal herein; and (2) the items designated as Numbered 39 and 40, respectively, in the above mentioned Designation of the Appellants filed herein October 10, 1940, and described in said Designation as "Summary of Issues Remaining for Decision by the Court Filed herein by the Western Pacific Railroad Company and A. C. James Co. on December 20, 1939", and "Summary of Issues as Stated by Counsel for Institutional Bondholders Committee Filed herein on December 20, 1939", respectively, and that the foregoing constitutes the transcript of record on the appeals heretofore taken by the above named Appellants from the order of the above named Court made, filed and entered on August 15, 1940, which approved a Plan of Reorganization of the above named Debtor.

I further certify that neither of said last mentioned items included in said Designation of the Appellants (i.e., Items Nos. 39 and 40) has been included in the foregoing transcript of record on [2771] appeal, for the reason that neither of the documents mentioned in said respective items has been filed in said Court, or is part of the files thereof.

I further certify that the cost of preparing and certifying the foregoing transcript of record on appeal is the sum of \$404.10, and that said amount has been paid to me by the attorneys for the Appellants herein.

In witness whereof, I hereunto set my hand and affix the seal of said District Court, this 30th day of December, 1940.

[Seal] WALTER B. MALING,

Clerk.

By J. P. WELSH,

Deputy Clerk.

[2772]

[Endorsed]: No. 9714. United States Circuit Court of Appeals for the Ninth Circuit. In the Matter of The Western Pacific Railroad Company, a corporation, Debtor. Western Pacific Railroad Corporation, a corporation, The Western Pacific Railroad Company, a corporation and Irving Trust Company, a corporation, as substituted Trustee under the General and Refunding Mortgage of Western Pacific Railroad Company, A. C. James Co., a corporation, The Railroad Credit Corporation, a corporation, Appellants, vs. Institutional Bondholders Committee and Reconstruction Finance Corporation, Appellees. Transcript of Record. (Excluding Certain Portions not Printed, in Accordance with Stipulation and Order.) Upon Appeals from the District Court of the United States for the Northern District of California, Southern Division.

Filed, December 31, 1940.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

In the United States Circuit Court of Appeals.
No. 9714

In the Matter of

THE WESTERN PACIFIC RAILROAD
COMPANY,

Debtor.

STATEMENT OF POINTS UPON WHICH
APPELLANTS WILL SEVERALLY
RELY IN SUPPORT OF THEIR RE-
SPECTIVE APPEALS AND DESIGNA-
TIONS OF PARTS OF THE RECORD
SAID APPELLANTS THINK NECESS-
ARY FOR THE CONSIDERATION OF
SAID POINTS.

The Western Pacific Railroad Company, debtor herein, The Western Pacific Railroad Corporation, A. C. James Co., The Railroad Credit Corporation, and Irving Trust Company as Trustee under the General and Refunding Mortgage of The Western Pacific Railroad Company, dated January 1, 1932, all of whom have, heretofore, severally appealed to the above entitled Court from the order of the District Court of the United States for the Northern District of California, Southern Division, made, filed and entered on August 15, 1940, by which the last mentioned Court approved a Plan of Reorganization of the debtor, do hereby, (in conformity with Rule 19(6) of the above entitled Court, jointly and severally,

- (1). state that the points upon which said re-

respective appellants severally intend to rely in support of their respective [2773] appeals, are the points set forth in the statements of said respective appellants which were filed in said District Court pursuant to Rule 75(d) of the Rules of Civil Procedure for the District Courts of the United States, and which are contained in the certified transcript of record on appeal herein at pages 1266 to 1291, thereof, and constitute a part of said record on appeal; said respective statements of points are, by reference, incorporated herein and made a part hereof; and

(2) designate as the parts of the record on appeal which said respective appellants think necessary for the consideration of their respective points, the entire record on appeal as made up by the Clerk of said District Court and certified by him, and lodged and filed herein December 31, 1940, and the original exhibits which (in conformity with Rule 75(i) of said Rules of Civil Procedure for the District Courts of the United States and pursuant to order of said District Court made, filed and entered November 27, 1940) were sent to the above entitled Court, in lieu of copies thereof, by the Clerk of said District Court, and constitute a part of the record on appeal on said appeals.

Dated: December 31, 1940.

PIERCE & GREER,

C. W. DOOLING,

Attorneys for Appellant,

The Western Pacific Railroad Company.

**WHITMAN, RANSOM,
COULSON & GOETZ,
GARRET W. McENERNEY,
ANDREW F. BURKE,**
Attorneys for Appellant,
A. C. James Co.

[2774]

**M. C. SLOSS,
SLOSS & TURNER,**
Attorneys for Appellant,
The Western Pacific Rail-
road Corporation.

**W. J. KANE,
EDWARD G. BUCKLAND,**
Attorneys for Appellant,
The Railroad Credit Cor-
poration.

**DAVIES, AUERBACH,
CONNELL & HARDY,
PILLSBURY, MADISON &
SUTRO,**

FELIX E. SMITH,

Attorneys for Appellant,
Irving Trust Company as
Trustee under the General
and Refunding Mortgage of
the Debtor.

[Endorsed]: Filed Dec. 31, 1940. Paul P.
O'Brien, Clerk.

[2775]

[Title of Circuit Court of Appeals and Cause.]

**ORDER EXTENDING TIME WITHIN WHICH
TO FILE TRANSCRIPT OF RECORD ON
APPEALS.**

Good cause appearing therefor, it is hereby ordered that the time for filing the transcript of record on the appeals heretofore taken to this Court by The Western Pacific Railroad Company, A. C. James Co., The Western Pacific Railroad Corporation, The Railroad Credit Corporation and Irving Trust Company as Trustee under the General and Refunding Mortgage of the Debtor, from the order of the United States District Court for the Northern District of California, Southern Division, made, filed and entered August 15, 1940, approving the Plan of Reorganization of the above named Debtor, which said time (as fixed by Rule 73 of the Rules of Civil Procedure for the District Courts of the United States, and three orders of the District Court, dated October 25, 1940, November 27, 1940 and December 12, 1940, respectively), will expire December 19, 1940 (i.e., ninety days after the date upon which the Notices of Appeal on said appeals were filed in said District Court) be and the same is hereby extended to and including December 31, 1940.

Dated: December 18, 1940.

CURTIS D. WILBUR,

Senior U. S. Circuit Judge.

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE

State of California,

City and County of San Francisco—ss.

Timothy McCarthy, being first duly sworn, deposes as follows:

1. I am and at all times herein mentioned, I was a citizen of the United States, over the age of twenty-one years and not a party to nor interested in the above entitled proceeding:

2. On December 18, 1940, I served the "Order Extending Time within which to File Transcript of Record on Appeal" (hereinafter called "Order Extending Time", simply), the original of which was filed in the office of the Clerk of the above entitled Court on December 18, 1940, and a certified copy whereof was filed in the office of the Clerk of the District Court of the United States, for the Northern District of California, Southern Division, on the same [2777] day, upon each of the persons hereinafter named personally, by delivering a copy of said Order Extending Time to said respective persons at their respective offices as next stated, viz:

(a) Upon Morrison, Hohfeld, Foerster, Shuman & Clark, Attorneys for Institutional Bondholders Committee, at their office, Crocker Building, San Francisco, California;

(b) Upon Brobeck, Phleger & Harrison, Attorneys for Reconstruction Finance Corporation, at their office, Crocker Building, San Francisco, California;

(c) Upon Chickering & Gregory, Attorneys for Crocker First National Bank of San Francisco, California, and Samuel Armstrong, Trustees of the First Mortgage of The Western Pacific Railroad Company, at their office, 111 Sutter Street, San Francisco, California;

(d) Upon Felix T. Smith and Pillsbury, Madison & Sutro, Attorneys for The Chase National Bank of the City of New York, at their office, Standard Oil Building, San Francisco, California;

(e) Upon Thomas, Beedy & Paramore, Attorneys for Bankers Trust Company, at their office, 301 Montgomery Street, San Francisco, California;

(f) Upon C. W. Dooling, Attorney for Appellant The Western Pacific Railroad Company, at his office, 878 Mills Building, San Francisco, California;

(g) Upon Felix T. Smith and Pillsbury, Madison & Sutro, Attorneys for Appellant Irving Trust Company, as Substituted Trustee under the General and Refunding Mortgage of The Western Pacific Railroad Company, at their office, Standard Oil Building, San Francisco, California;

(h) Upon M. C. Sloss and Sloss & Turner, Attorneys for Appellant The Western Pacific Railroad Corporation, at their office, 111 Sutter Street, San Francisco, California.

3. On December 18, 1940, I served said Order Extending Time upon the respective persons here-

inafter named by enclosing the same in securely sealed envelopes, with postage thereon fully prepaid, addressed to said respective persons at their respective offices hereinafter mentioned, and depositing said sealed envelopes, so addressed, in the United States Postoffice at San Francisco, California, viz:

[2778]

- (a) Upon Cravath, de Gersdorff, Swaine & Wood, Attorneys for Institutional Bondholders Committee, 15 Broad Street, New York, New York;
- (b) Upon C. M. Clay, Attorney for Reconstruction Finance Corporation, 1825 H Street, N. W., Washington, D. C.;
- (c) Upon Milbank, Tweed & Hope, Attorneys for Crocker First National Bank of San Francisco and Samuel Armstrong, Trustee of First Mortgage of The Western Pacific Railroad Company, 15 Broad Street, New York, New York;
- (d) Upon Milbank, Tweed & Hope, Attorneys for Chase National Bank of the City of New York, 15 Broad Street, New York, New York;
- (e) Upon Pierce & Greer, Attorneys for Appellant The Western Pacific Railroad Company, 40 Wall Street, New York, New York;
- (f) Upon Edward G. Buckland, and William J. Kane, Attorneys for Appellant The Railroad Credit Corporation, Maryland Trust Building, Baltimore, Maryland;

(g) Upon Davies, Auernbach, Connell & Hardy, Attorneys for Appellant Irving Trust Company as Substituted Trustee under the General and Refunding Mortgage of The Western Pacific Railroad Company, 1 Wall Street, New York, New York;

(h) Upon Whitman, Ransom, Coulson & Goetz, Attorneys for Appellant A. C. James Co., 40 Wall Street, New York, New York;

(i) Upon Leroy R. Goodrich, Attorney for The Western Realty Company, 1001 Bank of America Building, Oakland, California.

TIMOTHY McCARTHY

Subscribed and sworn to before me this 19th day of December, 1940.

(Seal) HENRY J. O'CONNOR,
Notary Public

In and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Dec. 31, 1940.

Paul P. O'Brien, Clerk. [2779]

[Title of Circuit Court of Appeals and Cause.]

ORDER EXTENDING TIME TO FILE
STIPULATION RE PORTIONS OF
TRANSCRIPT OF RECORD TO BE PRINTED

Upon application of Mr. M. C. Sless, counsel for appellant Western Pacific Railroad Corporation,

and good cause therefor appearing, IT IS ORDERED that the time of appellants within which to file stipulation designating portions of transcript of record which are to be printed be, and hereby is extended to and including January 23, 1941.

CURTIS D. WILBUR,

Senior United States Circuit Judge.

Dated: San Francisco, Calif., January 8, 1941.

[Endorsed]: Filed Jan. 8, 1941.

Paul P. O'Brien, Clerk. [2780].

[Title of Circuit Court of Appeals and Cause.]

AFFIDAVIT OF SERVICE

State of California,

City and County of San Francisco. ss.

Timothy McCarthy, being first duly sworn, deposes as follows:

1. I am and at all times herein mentioned, I was a citizen of the United States, over the age of twenty-one years and not a party to nor interested in the above entitled proceeding;

2. On January 9, 1941, I served the "Order Extending Time to File Stipulation re Portions of Transcript of Record to be Printed" (hereinafter called "Order Extending Time", simply), which was filed on January 8, 1941, with the Clerk of the above entitled Court upon each of the persons hereinafter named personally, by delivering a copy of said Order Extending Time to said respective persons at their respective offices as next stated, viz:

- (a) Upon Morrison Hohfeld, Foerster, Shuman, & Clark, Attorneys for Institutional Bondholders Committee, at their office, Crocker Building, San Francisco; [2781]
- (b) Upon Brobeck, Phleger & Harrison, Attorneys for Reconstruction Finance Corporation, at their office, Crocker Building, San Francisco, California;
- (c) Upon Chickering & Gregory, Attorneys for Crocker First National Bank of San Francisco, California, and Samuel Armstrong, Trustees of the First Mortgage of The Western Pacific Railroad Company, at their office, 111 Sutter Street, San Francisco, California;
- (d) Upon Felix T. Smith and Pillsbury, Madison & Sutro, Attorneys for The Chase National Bank of the City of New York, at their office, Standard Oil Building, San Francisco, California;
- (e) Upon Thomas, Beedy & Paramore, Attorneys for Bankers Trust Company, at their office, 301 Montgomery Street, San Francisco, California;
- (f) Upon C. W. Dooling, Attorney for Appellant The Western Pacific Railroad Company, at his office, 878 Mills Building, San Francisco, California;
- (g) Upon Felix T. Smith and Pillsbury, Madison & Sutro, Attorneys for Appellant Irving Trust Company, as Substituted Trustee under the General and Refunding Mortgage of

The Western Pacific Railroad Company, at their office, Standard Oil Building, San Francisco, California;

(h) Upon M. C. Sloss and Sloss & Turner, Attorneys for Appellant The Western Pacific Railroad Corporation, at their office, 111 Sutter Street, San Francisco, California.

3. On January 9, 1941, I served said Order Extending Time upon the respective persons herein-after named by enclosing the same in securely sealed envelopes, with postage thereon fully pre-paid, addressed to said respective persons at their respective offices hereinafter mentioned, and depositing said sealed envelopes, so addressed, in the United States Postoffice at San Francisco, California, viz:

(a) Upon Cravath, de Gersdorff, Swaine & Wood, Attorneys for Institutional Bondholders Committee, 15 Broad Street, New York, New York;

(b) Upon C. M. Clay, Attorney for Reconstruction Finance Corporation, 1825 H Street, N. W., Washington, D. C.;

(c) Upon Milbank, Tweed & Hope, Attorneys for Crocker First National Bank of San Francisco and Samuel Armstrong, Trustee of First Mortgage of The Western Pacific Railroad Company, 15 Broad Street, New York, New York; [2782]

(d) Upon Milbank, Tweed & Hope, Attorneys for Chase National Bank of the City of New York, 15 Broad Street, New York, New York;

- (e) Upon Pierce & Greer, Attorneys for Appellant The Western Pacific Railroad Company, 40 Wall Street, New York, New York;
- (f) Upon Edward G. Buckland and William J. Kane, Attorneys for Appellant The Railroad Credit Corporation, Maryland Trust Building, Baltimore, Maryland;
- (g) Upon Davies, Auerbach, Connell & Hardy, Attorneys for Appellant Irving Trust Company as Substituted Trustee under the General and Refunding Mortgage of The Western Pacific Railroad Company, 1 Wall Street, New York, New York;
- (h) Upon Whitman, Ransom, Coulson & Goetz, Attorneys for Appellant A. C. James Co., 40 Wall Street, New York, New York;
- (i) Upon Leroy R. Goodrich, Attorney for The Western Realty Company, 1001 Bank of America Building, Oakland, California.

TIMOTHY McCARTHY,

Subscribed and sworn to before me this 10th day of January, 1941.

(Seal) HENRY J. O'CONNOR.

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Jan. 14, 1941.

Paul P. O'Brien, Clerk. [2783]

[Title of Circuit Court of Appeals and Cause.]

**STIPULATION FOR ORDER DISPENSING
WITH PRINTING OF CERTAIN POR-
TIONS OF RECORD ON APPEAL.**

Whereas, certain portions of the record on appeal on the several appeals heretofore taken to the above entitled Court from the order made, filed and entered in the above proceeding by the District Court of the United States for the Northern District of California, Southern Division, on August 15, 1940, approving the Plan of Reorganization of the debtor, which are hereinafter described, are voluminous and of a character and size that would not readily lend themselves to reproduction in a printed record; and

Whereas, the substance of the essential parts or legal effect of certain other portions of such record, hereinafter described, are set forth in other portions of said record, and especially in the "Stipulation as to Facts not in Dispute", which appears at pages 960 to 1134, inclusive, in the record, as certified to the above entitled Court by the Clerk of the District Court (hereinafter called the "certified record"); and [2783]

Whereas, the parties hereto are of the opinion that it would be impractical and unduly burdensome to require such certain portions of such record to be printed and that the inclusion of said respective portions of said record in the printed record on appeal is unnecessary.

Now, therefore, the parties hereto, in consideration of the premises, do (subject to the approval of the above entitled Court) hereby stipulate as follows:

1. The portions of said record on appeal which are next hereinafter described (and whenever possible are, further, identified by references to the pages in the certified record where they appear) need not be printed or included in the printed record on appeal, on the aforesaid appeals, viz:

(a) The petition for order respecting the filing of claims and division of creditors and stockholders into classes, filed August 20, 1935, being Item Number 3 in Appellants' Designation (pp. 13 to 18);

(b) Order of the District Court dividing claims into classes filed October 20, 1935, being Item Number 4 in Appellants' Designation (pp. 19 to 25);

(c) Petition for appointment of trustees and order respecting notice of hearing of said petition filed August 31, 1935, being Item Number 5, in Appellants' Designation (pp. 26 to 35): [2784]

(d) Claim of A. C. James Co., filed September 10, 1935, being Item Number 6 in Appellants' Designation (pp. 36 to 47);

(e) Claim of The Western Pacific Railroad Corporation filed September 12, 1935, being Item Number 7 in Appellants' Designation (pp. 38 to 49);

- (f) Claim of Western Realty Company filed September 13, 1935, being Item Number 8 in Appellants' Designation (pp. 50 to 51);
- (g) Claim of The Railroad Credit Corporation filed on or before September 15, 1935, being Item Number 9 in Appellants' Designation (pp. 52 to 107);
- (h) Claim filed on behalf of holders or pledgees of General and Refunding Mortgage bonds on or before September 15, 1935, being Item Number 10 in Appellants' Designation (pp. 108 to 110);
- (i) Order appointing trustees filed September 23, 1935, being Item Number 11 in Appellants' Designation (pp. 111 to 116);
- (j) Order of September 30, 1935, modifying order appointing trustees, being Item Number 12 in Appellants' Designation (pp. 117 to 118);
- (k) The exhibits included in, annexed to and/or which form a part of the transcript of the hearings before the Interstate Commerce Commission [2785] of the United States, hereinafter called the "Commission" simply (said transcript being Item Number 16 in Appellants' Designation, and being set forth in the certified record at pages 1755 to 2770, inclusive, thereof) other than the exhibits numbered 1, 22, 27, 29, 32, 33, 38, 42, 76, 125 and 127 to 148, inclusive. None of the original Exhibits included in, annexed to or which form

part of said transcript of the hearings before said Commission, except those numbered 1, 42, 76 and 127 to 148, (both numbers included), are included in the certified record, but all said original Exhibits, other than those last mentioned, have, heretofore in accordance with Rule 75(i) of the Rules of Civil Procedure for the District Courts of the United States and an order of the District Court made, filed and entered November 27, 1940, been transmitted to the above entitled Court as part of the record on appeal herein, in lieu of copies thereof;

(1) That part of the transcript of the hearings before the Commission (said transcript being Item Number 16 in the Appellants' Designation, and being set forth in the certified record at pages 1755 to 2770, inclusive, thereof) which reports the arguments of counsel relating to petitions of intervention filed on behalf of the Missouri Pacific Railroad Company and Guy A. Thompson, Trustee of the Missouri Pacific Railroad Company, being part of the proceedings had before the Commission at the afternoon hearing held on December 9, 1936, the part to [2786] be omitted from the printed record on appeal being pages 630 to 673, inclusive, of said transcript and being set forth in the certified record at pages 2394 to 2437, inclusive, thereof.

(m) That part of the transcript of the hearings before the Commission which reports the arguments of counsel before the Commission at the hearings held on November 17, 1937 and January 20, 1939, the part to be omitted from the printed record on appeal being pages 710 to 1003, inclusive, of said transcript and being set forth in the certified record at pages 2475 to 2769, inclusive thereof.

(n) Order dated December 30, 1938, of the Commission, granting a rehearing, being Item Number 19 in Appellants' Designation (pp. 305 to 306);

(o) Petition of A. C. James Co. for leave to intervene before the Commission, dated April 18, 1936, being Item Number 21 in Appellants' Designation (pp. 373 to 387);

(p) Petition of The Railroad Credit Corporation for leave to intervene before the Commission dated March 14, 1936, being Item Number 22 in Appellants' Designation (pp. 388 to 391);

(q) Petition of Irving Trust Company, as trustee under the General and Refunding Mortgage of the debtor, for leave to intervene before the Commission dated November 19, 1936, being Item Number 23 in Appellants' Designation (pp. 392 to 398); [2787]

(r) Order of the District Court made November 8, 1939, fixing the time within which

objections to the plan of reorganization and claims for equitable treatment might be filed and designating December 8, 1939, as the date for filing such objections and claims, being Item Number 28 in Appellants' Designation (pp. 797 to 802);

(s) Petition of A. C. James Co. for leave to file petition of intervention, and order granting such petition, both filed December 1, 1939, petition of A. C. James Co. for leave to intervene and order made and filed, December 1, 1939, fixing time and place for hearing such petition, notice of filing petition of intervention of A. C. James Co., order granting petition of intervention of A. C. James Co., made and filed December 4, 1939, and notice of making and entry of said order, being Item Number 29 in Appellants' Designation (pp. 803 to 817);

(t) Petition of The Western Pacific Railroad Corporation for leave to file petition of intervention and order granting such petition and fixing date of hearing upon petition of intervention, both filed December 7, 1939, petition of intervention of The Western Pacific Railroad Corporation and notice of filing same, both dated December 7, 1939, order granting petition of intervention, dated December 11, 1939, and notice of making and entry of said order, being Item Number 30 in Appellants' Designation (pp. 818 to 831); [2788]

- (u) Petitions, orders and notices relating to intervention of Irving Trust Company as trustee under the General and Refunding Mortgage of the debtor, being Item Number 31 in Appellants' Designation (pp. 832 to 851);
- (v) Notice from Clerk of the District Court respecting filing of notices of appeal, being Item Number 52 in Appellants' Designation (pp. 1245 to);
- (w) Bonds for costs on appeal filed September 20, 1940, by respective appellants, being Item Number 53 in Appellants' Designation (pp. 1246 to 1256);
- (x) Verified statement of Crocker First National Bank of San Francisco as Corporate Trustee under the Debtor's First Mortgage, filed in the District Court on September 4, 1935, showing the principal amount of First Mortgage Bonds outstanding under said First Mortgage, being Item Number 1 in the additional portion of the record, proceedings and evidence to be included in the record on appeal filed in said District Court on October 21, 1940 by appellees Frederick H. Ecker, John W. Stedman and Reeve Schley, as a Committee for a Group of Institutional Holders of First Mortgage Bonds of the Western Pacific Railroad Company, and Crocker First National Bank and Samuel Armstrong, as trustees under the First Mortgage dated June 26, 1916 of The

Western Pacific Railroad Company (said designation [2789] being hereinafter called "Institutional Bondholders and First Mortgage Trustees Designation"), (pp. 1292 to 1293);

(y) Opinion and Order of the District Court entered November 9, 1935, confirming appointment of Trustees of the Debtor, being Item Number 2 in Institutional Bondholders and First Mortgage Trustees' Designation (pp. 1294 to 1299);

(z) Petition of the First Mortgage Trustees for order impounding income, for leave to intervene, and other relief, filed March 5, 1936, and Order to Show Cause, dated March 5, 1936, fixing time and place of hearing on said Petition, being Item Number 3 in Institutional Bondholders and First Mortgage Trustees' Designation (pp. 1300 to 1482);

(aa) Order entered March 9, 1936, permitting First Mortgage Trustees to intervene and making provision as to rights of said trustees with respect to income of the debtor, being Item Number 4 in Institutional Bondholders and First Mortgage Trustees' Designation (pp. 1483 to 1485);

(bb) Petition of the Institutional Bondholders' Committee for leave to intervene in proceedings before the Commission, dated June 25, 1936, and filed on or about June 26, 1936, being

Item Number 5 in Institutional Bondholders and First Mortgage Trustees' Designation (pp. 1486 to 1599); [2790]

(cc) Order of Commission entered July 9, 1936, permitting intervention of Institutional Bondholders' Committee in proceedings before Commission, being Item Number 6 in Institutional Bondholders and First Mortgage Trustees' Designation (pp. 1501 to);

(dd) Petition of the First Mortgage Trustees for leave to intervene before the Commission, dated October 23, 1936, and filed on October 26, 1936, being Item Number 7 in Institutional Bondholders and First Mortgage Trustees' Designation (pp. 1502 to 1509);

(ee) Petition of the Institutional Bondholders' Committee for leave to file petition of intervention and order granting such petition, both filed November 22, 1939; petition of intervention, verified November 16, 1939, of the Institutional Bondholders' Committee and notice of filing of same dated November 22, 1939, both filed November 22, 1939; order granting Institutional Bondholders' Committee's petition of intervention entered November 27, 1939, and notice of making and entry of said order dated November 28, 1939, being Item Number 13 in Institutional Bondholders and First Mortgage Trustees' Designation (pp. 1599 to 1623);

(ff) Petition of Reconstruction Finance Corporation for leave to file petition of intervention and order granting such petition and fixing date of hearing on petition of Intervention, both filed December 7, 1939; petition of intervention of Reconstruction Finance Corporation and notice of filing of same, both dated December 7, 1939, and order granting petition of intervention dated December 11, 1939, [2791] and notice of making and entry of said order, being Item Number 14 in Institutional Bondholders and First Mortgage Trustees' Designation (pp. 1624 to 1633);

(gg) Claim of Reconstruction Finance Corporation filed on or before September 12, 1935, being Item Number 3 in Reconstruction Finance Corporation Designation (pp. 1667 to 1680);

(hh) Petition of Reconstruction Finance Corporation for leave to intervene before the Commission, dated October 5, 1936, being Item Number 4 in Reconstruction Finance Corporation Designation (pp. 1681 to 1687);

(ii) Order of the Commission dated October 7, 1936, granting intervention to Reconstruction Finance Corporation, being Item Number 5 in Reconstruction Finance Corporation Designation (pp. 1688 to . . .);

(jj) Petition of Reconstruction Finance Corporation for leave to file petition of intervention and order granting such petition and

fixing date of hearing on petition of intervention, both filed in District Court December 7, 1939, petition of intervention of Reconstruction Finance Corporation and notice of filing same, both dated December 7, 1939, and order granting petition of intervention dated December 11, 1939, and notice of making and entry of said order, being Item Number 9 in Reconstruction Finance Corporation Designation (pp. 1624 to 1633); [2792]

(kk) The original exhibits offered in evidence at the hearing in the District Court on January 22, 1940 of the objections to the Plan of Reorganization of the Debtor, certified to said Court by the Commission *except* (1) the "Stipulation as to Facts not in Dispute" (less Exhibits "G" and "H" thereto mentioned in the succeeding paragraph [ll] hereof) and the memorandum of corrections therein, identified by the witness, Charles Elsey, which said stipulation and memorandum are included in the certified record at pages 960 to 1133, inclusive, thereof; (2) the following exhibits introduced by Irving Trust Company, viz; Exhibits 1(a) to 1(i), inclusive; page 1 of Exhibit 2 and Exhibits 4 to 12, inclusive; (3) the exhibit introduced by The Western Pacific Railroad Corporation and marked its Exhibit 1, and (4) the exhibits introduced by Reconstruction Finance

Corporation and marked its Exhibits 1 and 2; none of said original exhibits, other than those mentioned in the subparagraph marked (1) hereof, are included in the certified record, but all of said original exhibits, other than those last mentioned, have heretofore, in accordance with Rule 75[i] of the aforesaid Rules of Civil Procedure and the aforesaid Order of the District Court made November 27, 1940, been transmitted to the Clerk of the above entitled Court, in lieu of copies thereof; [2793]

(11) Exhibits "G" and "H" to the aforesaid "Stipulation as to Facts not in Dispute" (pp. 1080 to 1112).

2. That, notwithstanding the provisions of Rules 19 and 21 of the Rules of the above entitled Court, the aforesaid portions of said record on appeal which shall not be printed or included in the printed record on appeal on said appeals, shall constitute and be considered and treated as part of the record on appeal on said appeals and a part of the record on any petition for certiorari to the Supreme Court of the United States that may be filed by any party in this cause, may be referred to by any party in brief or argument, and shall be given the same force and effect as though they were printed and included in the printed record on appeal on said appeals; and

3. That the above entitled Court (or the Senior Circuit Judge of said Court) may, without notice

to any of the parties hereto, make an order approving this stipulation, and, otherwise, providing in accordance therewith.

Dated: January 20, 1941.

C. W. DOOLING,
PIERCE & GREER,

Attorneys for Debtor.

MORRISON, HOHFELD, FOERSTER,
SHUMAN & CLARK,
CRAVATH, DE GERSDORFF, SWAINE
& WOOD,

Attorneys for Institutional
Bondholders' Committee.

DAVIES, AUERBACH, CONNELL & HARDY,
PILLSBURY, MADISON & SUTRO,

Attorneys for Irving Trust Company,
as Substituted Trustee
under General and Refunding
Mortgage. [2794]

ANDREW F. BURKE,
GARRET W. McENERNEY,
WHITMAN, RANSOM, COULSON & GOETZ,

Attorneys for A. C. James Co.

BROBECK, PHLEGER & HARRISON,
C. M. CLAY,

Attorneys for Reconstruction
Finance Corporation.

E. G. BUCKLAND,
WM. J. KANE,

Attorneys for The Railroad
Credit Corporation.

M. C. SLOSS,

SLOSS & TURNER,

Attorneys for The Western
Pacific Railroad Corporation.

CHICKERING & GREGORY,

MILBANK, TWEED & HOPE,

Attorneys for Crocker First
National Bank of San Fran-
cisco and Samuel Armstrong,
Trustees of First Mortgage.

[Title of Circuit of Appeals and Cause.]

Upon reading the foregoing Stipulation and good cause appearing therefor, IT IS HEREBY ORDERED

1. That the foregoing Stipulation be and the same is hereby approved;
2. That in accordance with said Stipulation the portions of the record on appeal on the appeals mentioned therein, which are particularly described in said Stipulation, need not be printed or included in the printed record on appeal on said appeals;
3. That, notwithstanding the provisions of Rules 19 and 21 of the Rules of this Court, the above mentioned portions of the record on appeal on said appeals, which shall not be printed or included in the printed record on appeal, as hereinabove provided, shall constitute and be considered and treated by this Court as parts of the record on appeal on the aforesaid appeals, and a part of the record on any petition for certiorari to the Supreme Court

of the United States that may be filed by any party in this cause, may be referred to by any party in brief or argument, and shall be given the same force and effect as though they were printed and included in the printed record on appeal on said appeals.

Dated: January 23, 1941.

CURTIS D. WILBUR,

Senior United States Circuit Judge.

[Endorsed]: Filed Jan. 24, 1941. Paul P.
O'Brien, Clerk. [2796]

